

Scanned Jun 18, 2013

ARD/IEP Report

Name: Larner, JohnDate: 2/17/9540.6503  
Rev. 1994

## Development of the Individual Educational Plan (IEP)

IV. COMPETENCIES: ☒ Discussed below ☐ Reviewed at Initial/Annual ARD

## A. 1. \*Current academic/developmental skills:

John is able to write upper and lower case letters of the alphabet and words from dictation.2. \*Content areas in which the student's disability significantly interferes with his/her ability to meet regular academic mastery levels: Written Language

## B. Physical, as it affects participation in: (Check the appropriate competencies)

- \*1. Instructional settings: ☒ Normal Vision ☐ with/ ☒ without glasses ☒ Normal Hearing ☐ Other: \_\_\_\_\_  
☒ Good General Health ☐ Visually Impaired

AND/OR

- \*2. Physical Education: Student is capable of receiving instruction in the regular Physical Education program without modifications. ☒ Yes ☐ No If No, document in deliberations page

## C. \*Behavioral/social as it affects:

## 1. \*Educational placement and programming: (Check the appropriate competencies)

- ☐ Interacts appropriately with peers ☒ Interacts appropriately with adults  
☐ Respects authority ☐ Is cooperative  
☐ Maintains attention to task ☐ Adjusts easily to new situations  
☐ Other \_\_\_\_\_

## 2. \*Ability to follow disciplinary rules: (Check the appropriate responses)

- ☐ Yes ☒ No The student is able to follow the student code of conduct without modification. If no, complete the ARD/IEP Supplement: Behavior Management Plan (BMP).

## D. \*Prevocational/Vocational (Prerequisite to Vocational Education)

☒ (Not required for students age 14 years or under)

- |   |  |   |
|---|--|---|
| <input type="checkbox"/> Keeps work area neat     | <input type="checkbox"/> Has good attendance | <input type="checkbox"/> Is responsible                   |
| <input type="checkbox"/> Has good social skills   | <input type="checkbox"/> Follows directions  | <input type="checkbox"/> Is able to work on time schedule |
| <input type="checkbox"/> Is mechanically inclined | <input type="checkbox"/> Is reliable         | <input type="checkbox"/> Cares for materials              |
| <input type="checkbox"/> Has part time job        | <input type="checkbox"/> Others: _____       |   |

## V. IEPs FOR INSTRUCTIONAL AND/OR RELATED SERVICES:

- ☐ Yes ☐ No  
☒ N/A

\*The ARD Committee reviewed achievement on each of the previous year's short-term objectives on the IEP (Applicable to all but Initial ARD Committee meetings.)

☒ A. Annual goals and short term objectives developed.☐ B. Based on above competencies (IV) and current functioning, no additional goals or objectives were developed at this meeting.☐ C. Previous IEPs remain in effect.WHITE-Exceptional Education Audit Folder  
CANARY-Parent's CopyPINK-Exceptional Education Teacher or Permanent Record folder, if student does not qualify  
GOLDENROD-Exceptional Education Office

\* Denotes Required Items

ARD

Page 2 of 14

Scanned Jun 18, 2013

ARD/IEP Report Supplement

40.6509  
Rev. 1994Name: JohnDate: 2/17/95HOUSTON INDEPENDENT SCHOOL DISTRICT  
EXCEPTIONAL EDUCATION DEPARTMENT  
ARD/IEP SUPPLEMENT: Individual Education Plan (IEP)

☒ \*Instructional Services Listening Comprehension Draft 2/17/95  
(Subject area in which student's disability significantly  
interferes with his/her ability to meet regular academic standards.)  
or  
☐ \*Related Service(s) Not Applicable

Date  
Accepted by ARD Committee 2/17/95  
Date

Specific Service(s)

Position Responsible for Implementation  
(Required for Related Services)

\*Duration of Services: from 2/17/95 to 6/95  
Month/Day/Year Month/Year

ANNUAL GOAL:

John will work toward mastery of essential  
elements for Listening Comprehension, Grade 3.4.

*Short Term Objectives <sup>1</sup> The student will be able to:	Indicate level of Mastery Criteria <sup>2</sup>	Evaluation Procedure <sup>3</sup>	Schedule for Evaluation	EVALUATION CODES				Date Regr- ession?
				DRG	DRG	DRG	DRG	
① Recognize a speaker's purpose for a presentation.	80%	2,8	9 wks.					Y/N
								Y/N
								Y/N
② Respond to a speaker by asking questions and contributing information.	80%	2,8	9 wks.					Y/N
								Y/N
								Y/N
								Y/N
③ Distinguish between fact and opinion.	80%	2,8	9 wks.					Y/N
								Y/N
								Y/N
								Y/N
								Y/N
								Y/N
								Y/N

Note: <sup>1</sup>Goals and objectives should reflect essential elements  
where ARD committee deems appropriate.

<sup>2</sup>Criteria and schedule must allow for determining student's  
passing grades and eligibility for participation in extracurricu-  
lar activities. Grades in Exceptional Education classes reflect  
mastery of IEP objectives.

## \*Evaluation Procedure Codes:

1. Teacher-made tests
2. Observations
3. Weekly Tests
4. Unit Tests
5. Student Conferences
6. Work Samples
7. Portfolios
8. Other Listening activities

## \*Evaluation Codes:

C - Continue  
M - Mastered

WHITE-Exceptional Education Audit Folder  
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\*Describes Required Items

IEP

Page 4 of 14



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Name:

Ramirez, John

Date:

2/17/95

40.6509  
Rev. 1994HOUSTON INDEPENDENT SCHOOL DISTRICT  
EXCEPTIONAL EDUCATION DEPARTMENT  
ARD/IEP SUPPLEMENT: Individual Education Plan (IEP)☒ \*Instructional Services Speech Therapy  
(Subject area in which student's disability significantly  
interferes with his/her ability to meet regular academic standards.)Draft 2/29/95  
Date  
☒ Accepted by ARD Committee 2/17/95  
Date☐ \*Related Service(s) not required  
Specific Service(s)Position Responsible for Implementation  
(Required for Related Services)\*Duration of Services: from 2/17/95 to 6/95  
Month/Day/Year Month/YearANNUAL GOAL: Student will improve Language  
Moderate Skills

*Short Term Objectives <sup>1</sup> The student will be able to:	Indicate level of Mastery Criteria <sup>2</sup>	Evaluation Procedures	*Schedule for Evaluation	EVALUATION CODES <sup>3</sup>				Date Regres- sion?
				DIE C.M.	DIE C.M.	DIE C.M.	DIE C.M.	
1. Student will develop word association skills with similarities and relationships.	85%	2,8	9wks					Y/N
								Y/N
								Y/N
								Y/N
2. Student will increase Vocabulary skills								Y/N
Receptively	90%	2,8	9wks					Y/N
Expressively	90%	2,8	9wks					Y/N
								Y/N
3. Student will use target vocabulary in written sentences and conversation	85%	2,8	9wks					Y/N
	85%	2,8	9wks					Y/N
								Y/N
								Y/N

Note: <sup>1</sup>Goals and objectives should reflect essential elements  
where ARD committee deems appropriate.<sup>2</sup>Criteria and schedule must allow for determining student's  
passing grades and eligibility for participation in extracurricu-  
lar activities. Grades in Exceptional Education classes reflect  
mastery of IEP objectives.

## \*Evaluation Procedure Codes:

1. Teacher-made tests
2. Observations
3. Weekly Tests
4. Unit Tests
5. Student Conferences
6. Work Samples
7. Portfolios
8. Other: Oral Activities

## \*Evaluation Codes:

- C - Continue  
M - Mastered

WHITE-Exceptional Education Audit Folder  
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\*Denotes Required Item

IEP  
Page 5 of 14

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Name: Ramirez, JohnDate: 2/17/9540-5509  
Rev. 1994HOUSTON INDEPENDENT SCHOOL DISTRICT  
EXCEPTIONAL EDUCATION DEPARTMENT  
ARD/IEP SUPPLEMENT: Individual Education Plan (IEP)

- ☒ \*Instructional Services Speech Therapy  
(Subject area in which student's disability significantly  
interferes with his/her ability to meet regular academic standards.)

Draft 2/17/95  
Date  
Accepted by ARD Committee 2/17/95  
Date

- ☐ \*Related Service(s) not required  
Specific Service(s)

Position Responsible for Implementation  
(Required for Related Services)

\*Duration of Services: from 2/17/95 to 2/95  
Month/Day/Year Month/Year

ANNUAL GOAL:

Moderate Student will increase Articulation Skills with target phonemes /θ, v, z/

*Short Term Objectives <sup>1</sup> The student will be able to:	Indicate level of Mastery Criteria <sup>2</sup>	Evaluation Procedure <sup>3</sup>	*Schedule for Evaluation	EVALUATION CODES <sup>4</sup>				Date Regres- sion?
				1st	2nd	3rd	4th	
1. Student will produce target phonemes in sentences (structured)	85%	2, 8	9 wks					Y/N
2. Student will produce target phonemes during reading	85%	2, 8	9 wks					Y/N
3. Student will produce target phonemes during conversational speech (structured)	85%	2, 8	9 wk					Y/N
								Y/N
								Y/N
								Y/N
								Y/N
								Y/N
								Y/N
								Y/N

Note: <sup>1</sup>Goals and objectives should reflect essential elements where ARD committee deems appropriate.

<sup>2</sup>Criteria and schedule must allow for determining student's passing grades and eligibility for participation in extracurricular activities. Grades in Exceptional Education classes reflect mastery of IEP objectives.

## \*Evaluation Procedure Codes:

- Teacher-made tests
- Observations
- Weekly Tests
- Unit Tests
- Student Conferences
- Work Samples
- Portfolios
- Other: Deal Activities

## \*Evaluation Codes:

C - Continue  
M - Mastered

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\*Denotes Required Items

Page 12 of 14  
IEP



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ARD/IEP Report Supplement

Name:

Ramirez, John

Date:

2/17/95

40.6521  
Rev. 1994HOUSTON INDEPENDENT SCHOOL DISTRICT  
EXCEPTIONAL EDUCATION DEPARTMENT  
ARD/IEP SUPPLEMENT: Speech Modifications

Check all that apply.

## I. ARTICULATION

- ☒ Do not penalize for spelling errors related to misarticulations.
- ☒ Do not penalize for phonetic errors related to misarticulations.
- ☒ Modify types of oral responses expected.
- ☒ Reduce expected length of oral responses.
- ☐ Use a signal to help student know when to \_\_\_\_\_
- ☐ Implement IEP classroom goals in cooperation with speech therapist.

## II. DYSFLUENCY

- ☐ Grades should not be lowered because of a stuttering trait demonstrated during oral responses.
- ☐ Increase wait time for oral responses.
- ☐ Reduce stress for student by \_\_\_\_\_
- ☐ Modify types of oral responses expected.
- ☐ Use a signal to help student know when to \_\_\_\_\_
- ☐ Reduce expected length of oral responses.
- ☐ Monitor for appropriate rate of speech.

## III. RECEPTIVE LANGUAGE

- ☒ Refine/reteach questionable vocabulary and concepts.
- ☒ Preferential seating
- ☐ Tape instructional materials.
- ☒ Model expected performance/response.
- ☒ Require students to repeat directions.
- ☐ Use key words when modeling expected performance.
- ☒ Keep testing vocabulary the same as teaching vocabulary.
- ☒ Encourage small group cooperative learning.
- ☒ Visual cues to accompany oral instructions.
- ☐ Change essential element requirements: \_\_\_\_\_

## IV. EXPRESSIVE LANGUAGE

- ☒ Allow ample time for word retrieval.
- ☐ Use cueing hierarchy.
- ☒ Emphasize paper/pencil tasks.
- ☒ Modify length, type and/or complexity of expected oral response.
- ☐ Change essential element requirements: \_\_\_\_\_

## V. VOICE

- ☐ Encourage vocal rest.
- ☐ Utilize a cue to remind student of appropriate vocal behavior.
- ☐ Assign a peer monitor.
- ☐ Utilize amplification for oral presentations.
- ☐ Shorten length of oral tasks.
- ☐ Monitor for appropriate voice quality.

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\*Denotes Required Items

Page 7 of 14 Speech

Scanned Jun 18, 2013

ARD/IEP Report

40.6504  
Rev.1994Name: Lanning, JohnDate: 2/17/95

## VI. RECOMMENDATIONS: (\*DENOTES REQUIRED ATTACHMENTS; ✓ all appropriate for this student)

A. ARD/IEP SUPPLEMENTS (Discussion to be recorded on *Deliberations* page)

- ☐ 1. Extended Year Services (EYS)  
☐ 2. Failure Review  
☐ 3. Transition Plan (ITP)  
☒ 4. Speech Modifications  
☒ 5. Individualized Education Plan  
☐ 6. Least Restrictive Environment  
☐ 7. Visually Impaired  
☐ 8. Behavior

PDD, Multiply Impaired and Lifeskills Students

- ☐ 9. Graduation Provisions  
☐ 10. Autistic Supplement  
☒ 11. Services to be Provided  
☐ 12. Out of District Placement  
☐ 13. Behavior Management Plan (BMP)  
☐ 14. Other: \_\_\_\_\_  
☐ 15. Other: \_\_\_\_\_

Management Plan/Autistic,

## B. ASSESSMENT OF ACADEMIC SKILLS (TAAS, Texas Assessment of Academic Skills)

- ☐ Criterion referenced assessment (TAAS) is not offered for this student this year  
☒ Criterion referenced assessment (TAAS) is offered for this student next year

or

The student:

- ☐ 1. will take the TAAS--all areas

or

- ☒ 1. Is exempt in all areas  
☐ 2. Is exempt from TAAS reading  
☐ 3. Is exempt from TAAS mathematics  
☐ 4. Is exempt from TAAS writing \_\_\_\_\_  
☐ 5. Is exempt from TAAS \_\_\_\_\_

AREA(S)

MODIFICATIONS as defined in test administration materials:

or

Name of additional test(s)

- ☐ 1. Will take all parts under standard conditions as defined in test administration materials  
☐ 2. Will be included in optional testing group (describe) \_\_\_\_\_

[(SBOE §101.3 (d) Exemptions)]

[(SBOE §101.3( a-k) Exemptions pp. 77-78)]

[(SBOE §89.223( c) p. 76)]

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\* Denotes Required Items

Page 8 of 11 ARD



Scanned Jun 18, 2013

ARD/IEP Report

Name

Lamir, John

Date

2/17/95

40.65/95

Rev. 1994

## VII. PLACEMENT ALTERNATIVES:

\*Placement alternatives reviewed, including services in regular, bilingual/English as a second language and compensatory education for which the student is eligible and additional services needed, are identified below. Consideration of the occupational training needs for students at or before entry into high school or by age 14 was discussed. Check those reviewed:

- |   |   |   |
|---|---|---|
| <input type="checkbox"/> Regular Education only   | <input type="checkbox"/> Alternative Schools                      | <input type="checkbox"/> BIC (Behavior Intervention Center) |
| <input checked="" type="checkbox"/> Regular Education with modifications in pacing, methods, or materials | <input type="checkbox"/> Community Services Classes               | <input type="checkbox"/> BAC (Behavior Adjustment Center)   |
| <input type="checkbox"/> Regular Education with support services  | <input type="checkbox"/> Homebound                                | <input type="checkbox"/> Related Services: _____            |
| <input checked="" type="checkbox"/> Resource Classroom (exceptional education)                            | <input type="checkbox"/> Homebased Instruction*                   | <input type="checkbox"/> Related Services: _____            |
| <input type="checkbox"/> Compensatory Education   | <input type="checkbox"/> Community Based Instruction              | <input type="checkbox"/> Other: _____                       |
| <input type="checkbox"/> Self-contained class (exceptional education)                                     | <input type="checkbox"/> Hospital Class                           | <input type="checkbox"/> Other: _____                       |
| <input type="checkbox"/> Regular Vocational Education   | <input type="checkbox"/> Hospital Bedside                         | <input type="checkbox"/> Other: _____                       |
| <input type="checkbox"/> Vocational Education for Handicapped   | <input type="checkbox"/> Itinerant Teacher Services               |   |
| <input type="checkbox"/> On-the-Job Training  | <input checked="" type="checkbox"/> Speech Therapy                |   |
| <input type="checkbox"/> Inclusion  | <input type="checkbox"/> Regional Day School Program for the Deaf |   |
|   | <input type="checkbox"/> Texas School for the Visually Impaired   |   |

NOTE: ARD/IEP Supplement: Least Restrictive Environment Justifications should be completed before identifying the campus and instructional arrangement of the student who is to be in Exceptional Education classes for 50% or more of the school day.

\*Recommended no more than ten (10) days with some direct services provided. If exceeds 10 days, a recent (within the year) assessment and ARD/IEP is needed.

## VIII. DETERMINATION OF PLACEMENT:

\*The committee determined that the student's placement will be:

- |   |   |                          |
|---|---|--------------------------|
| <u>Jefferson E.D.</u>   | <u>Regular / Resource / Speech</u>  | <u>2/17/95</u>           |
| CAMPUS  | INSTRUCTIONAL SETTING*  | PROGRAM                  |
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | <input checked="" type="checkbox"/> This is the campus which the student would attend if not disabled.  | EFFECTIVE DATE OF CHANGE |
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | *This is the campus that offers the services as close as possible to the student's home. *If NO, explain reason for other placement: _____  |                          |
| <input type="checkbox"/> Yes <input type="checkbox"/> No            | For students placed in the Regional Day School Program for the Deaf, the committee documents that the student's hearing loss severely impairs processing linguistic information even with recommended amplification and the loss adversely affects education performance. |                          |
| <input checked="" type="checkbox"/> Not Applicable                  |   |                          |

## IX. ASSURANCES: (Check all applicable items)

The committee assures that exceptional education placement:

\* A. for a national origin minority group student or linguistically different student is not based on criteria which was developed solely on command of the English language.

- |   |                       |  |   |
|---|-----------------------|--|---|
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | *BASIS FOR ASSURANCE: | <input type="checkbox"/> adaptations in testing procedures     | <input type="checkbox"/> use of interpreter             |
|   |                       | <input checked="" type="checkbox"/> parent/student information | <input checked="" type="checkbox"/> language assessment |
|   |                       | <input type="checkbox"/> bilingual assessment                  |   |

\* B. is not based on deficiencies identified as directly attributable to a different culture or lifestyle or lack of educational opportunities. ☒ Yes ☐ No BASIS FOR ASSURANCE: ☒ parent/student information ☒ sociological assessment

C. ☒ Yes ☐ No The committee assures that all instructional and related services specified in the IEP will be provided to the student at no cost. Fees normally charged to non-disabled students or their parents, as a part of the general education program, may be charged (i.e., art or laboratory fees).

## X. PARENT/STUDENT RIGHTS:

- ☒ Yes ☐ No \* Your rights were explained to you when you received the current copy of the booklet: *Special Education: Parent and Student Rights*. Please refer to page vi of this booklet or ask the exceptional education personnel for further explanations. Parent has acknowledged receipt of the *Special Education: Parent and Student Rights* and has no questions. 11-8-94

DATE

NOTE: If appropriate, complete the ARD/IEP Supplement: Out of District Placement Verification or Referral to a Regional Day School Program for the Deaf.  
\* Enter the instructional setting that meets the requirements listed in the Texas Student Attendance Accounting Handbook.

WHITE-Exceptional Education Audit Folder

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\*Denotes Required Items

Page 9 of 14

Scanned Jun 18, 2013

ARD/IEP Report Supplement

Name: Lamir, JohnDate: 2/17/9540.6508  
Rev.1994HOUSTON INDEPENDENT SCHOOL DISTRICT  
EXCEPTIONAL EDUCATION DEPARTMENT  
ARD/IEP SUPPLEMENT: \*Services to be Provided, page 1

SUBJECT (OPTIONS) Year <u>95</u> Semester <u>Sp.</u>	Grade Assigned by†		Off Level Grade (Elem.)		Current Instructional Level	Min./Day Hours/Week in Regular Education*	Min./Day Hours/Week in Exceptional Education*	**REQUIRED MODIFICATIONS (if applicable) Write the code for each				
	R	E	Yes	No								
Reading	✓			✓	5.0	5.0		1	4	12	13	14
Writing		✓	✓				2.5	1	4	12	13	14
Spelling	✓			✓	5.0	2.5		1	4	12	13	14
Math	✓			✓	5.0	5.0		1	4	12	13	14
Science	✓			✓	5.0	5.0		1	4	12	13	14
Social Studies	✓			✓	5.0	5.0		1	4	12	13	14
P.E./Elective	✓			✓	5.0	5.0		1	29			
Speech Therapy		✓	✓				1.0	1				

† R - Regular Education E - Exceptional Education C - Combination Total Exceptional Education hours per week 3.5

SUBJECT (OPTIONS) Year _____ Semester _____	Grade Assigned by†		Off Level Grade (Elem.)		Current Instructional Level	Min./Day Hours/Week in Regular Education*	Min./Day Hours/Week in Exceptional Education*	**REQUIRED MODIFICATIONS (if applicable) Write the code for each				
	R	E	Yes	No								
Promotional ARD												
due Spring 1995												

† R - Regular Education E - Exceptional Education C - Combination Total Exceptional Education hours per week

NOTE: For Speech students, list Speech as a subject and indicate method (Direct, Consultation, Collaboration, Group) and include in Total hours per week.

- \*\* MODIFICATIONS required to assure success in regular, remedial, and support programs including eligibility for participation in extra-curricular activities are:
- |                                       |  |                                      |   |
|---------------------------------------|--|--------------------------------------|---|
| 1. Changes in the pace of instruction | 9. Extended time for assignment completion | 17. Calculators                      | 25. Special instructional/adaptive equipment                                  |
| 2. Oral tests                         | 10. Behavior management plan               | 18. Interpreter for hearing impaired |   |
| 3. Short answer tests                 | 11. Shortened assignments                  | 19. Frequent breaks                  | 26. Changes in requirements of essential elements                             |
| 4. Modified tests                     | 12. Assignment notebooks                   | 20. Oral directives                  | 27. Changes in project or report requirements                                 |
| 5. Taped texts                        | 13. Study sheets                           | 21. Peer tutoring                    | 28. Changes in tools, equipment or machinery used in the classroom (Voc. Ed.) |
| 6. Highlighted texts                  | 14. Repeated review/drill                  | 22. Concrete reinforcers             | 29. Other (i.e., Other modifications for Speech)                              |
| 7. Taping Lectures                    | 15. Reduce pencil/paper tasks              | 23. Defined physical space           |   |
| 8. Note taking assistance             | 16. Preferential seating                   | 24. Positive reinforcers             | 30. Other:  |

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\*Denotes Required Item

Services Page 10 of 14



ARD/IEP Report Supplement

40.6511  
 Rev.1994

Name: Lamiray, John Date: 2/17/95

HOUSTON INDEPENDENT SCHOOL DISTRICT  
 EXCEPTIONAL EDUCATION DEPARTMENT  
 ARD/IEP SUPPLEMENT: \*Services to be Provided, page 2

LEARNING STYLE:

☐ Auditory ☐ Visual ☐ Tactile ☒ Multisensory

SPECIAL CONSIDERATIONS:

John's behavior does affect his educational functioning.

COORDINATION BETWEEN REGULAR EDUCATION AND EXCEPTIONAL EDUCATION:

Responsibility for monitoring student performance in Regular Education: Exceptional Ed. Teacher  
 NAME TITLE

Frequency: 9 wks.

Method: conference

Schedule of evaluation participation in extracurricular activities: ☐ 3 wks ☐ 6 wks ☒ 9 wks Other: report card

RELATED SERVICES:

SERVICE	PROVIDER TITLE	TIME PER WEEK/ MONTH	DIRECT SERVICE/ CONSULTATION
<u>none</u>			

SPECIAL TRANSPORTATION:

☐ Yes ☒ No  
 \*If yes, cite justification:  
 (for Parent or HISD)

Provided by: ☐ HISD ☐ Parent

Type of bus: ☐ Non-wheelchair bus ☐ Wheelchair bus

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\*Denotes Required Item

ARD/Services, con't.

Page 11 of 14

Scanned Jun 18, 2013

Name: Lanning, JohnDate: 2-17-9540.6507  
Rev. 1994

## Deliberations of the ARD/IEP Committee†

Record deliberations of ARD supplements in minutes (if applicable).  
Meeting audiotaped ☐ Yes ☒ No

The purpose of the ARD meeting was to initiate services for Exceptional Education. Mother was present for the meeting.

Marti Artoon, Evaluation Specialist, explained the psychoeducational testing. John qualifies for the Learning Disabled (LD) handicapping condition in the criteria of Written Language and Listening Comprehension. Mrs. Artoon added John has an average intelligence level but is having difficulty with his academics due to his behaviors.

Mrs. Stiles, regular classroom teacher, stated John tries hard in class but has great difficulty controlling himself. She added he displays inappropriate behaviors such as disruptive, disorganized, seldom finishes his work, rude behavior, and out of seat/area.

Mother stated John has been living with grandmother, and will be moving out of district with his grandmother.

Lissina Martinez, Speech/Language Therapist, explained John continues to qualify in Speech Therapy. She developed new IEPs for Speech.

The committee agreed the best restrictive environment was resource for writing, and speech therapy. All other academic subjects will take place in the regular classroom. Due to his easily frustration, it was recommended he be exempt from all areas of TAPS testing. It was recommended by the committee that a psychiatric

☐ ARD/IEP Report received today by parent/guardian/surrogate parent/adult student  
This entire document represents the actions of this committee.

Recorded by \_\_\_\_\_

Signature \_\_\_\_\_

Title \_\_\_\_\_

† Denotes Required Items

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† Required for each ARD/IEP Meeting.

Page 12 of 14 ARD



Scanned Jun 18, 2013

ARD/IEP Report

Name: Lanning, JohnDate: 2/17/9540.6507  
Rev. 1994Deliberations of the ARD/IEP Committee<sup>1</sup>

Record deliberations of ARD/IEP in minutes (if applicable).

Meeting audiotaped ☐ Yes ☒ No

evaluation be pursued. Mother agreed with the committee.

☒ ARD/IEP Report received today by parent/guardian/surrogate parent/adult student  
This entire document represents the actions of this committee.

Recorded by Kathy Richards

Signature

Title



WHITE-Exceptional Education Audit Folder

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<sup>1</sup> Denotes Required Items<sup>1</sup> Required for each ARD/IEP MeetingPage 13 of 14 ARD

Scanned Jun 18, 2013

ARD/IEP Report

40.6506  
Rev. 1994Name: Ramirez, JohnDate: 2/29/95

## XI. SIGNATURES OF COMMITTEE MEMBERS AND OTHER PARTICIPANTS

SIGNATURE and TITLE MEMBERS:	POSITION	AGREE A	DISAGREE D
<u>Priscilla Ramirez</u>	Parent(s) <sup>1</sup>	✓	
<u>Angela D. Garcia Principal</u>	Administrator <sup>3</sup>	✓	
<u>John B. Stacy</u>	Regular Education Instructor <sup>4</sup>	✓	
<u>Kathy Richards</u>	Exceptional Education Instructor	✓	
<u>Mark Anthony El. Ruiz</u>	Assessor(s) <sup>2</sup>	✓	
OTHER PARTICIPANTS:			
<u>Thomas S. Roby</u>	Counselor	✓	
<u>Lisandra Martinez</u>	Speech Therapist	✓	

<sup>1</sup> Parent/ Guardian/ Surrogate Parent/Adult Student<sup>2</sup> Assessment personnel are required when interpretation of assessment data is being considered.<sup>3</sup> May be LPAC representative, vocational administrator or designee.<sup>4</sup> May be LPAC representative if the administrator does not represent LPAC or vocational teacher when appropriate.The committee mutually agreed to implement the program reflected in these proceedings. ☒ Yes

☐ NO \*The members of this ARD committee have not reached mutual agreement. The school has offered and the parent has agreed to a recess of not more than 10 school days. During the recess the members shall consider alternatives, gather additional data, and/or obtain additional resource persons to enable them to reach mutual agreement. This recess does not apply if the student presents a danger of physical harm to himself or herself or others, or if the student has committed an expellable offense. The committee will reconvene on \_\_\_\_\_ at \_\_\_\_\_.

PLACE AND TIME

DATE

## XII. FOR INITIAL PLACEMENT ONLY:

☒ Yes ☐ No \*I understand that my consent for placement is voluntary and may be withdrawn at any time prior to initial placement. However, if I revoke consent after initial placement, my child's/my placement will not change unless:  
(a) the school and I agree otherwise (following an ARD committee procedures), or  
(b) a due process hearing resolves the disputes.

☒ Yes ☐ No \*I have received and reviewed the Admission, Review and Dismissal (ARD/IEP) Committee Report dated 2-17-95 that has been prepared for John Ramirez.

☒ Yes ☐ No \*I understand and agree with the ARD/IEP Committee's decision and give my permission for the educational placement that has been proposed for my child.

Priscilla Ramirez

\*Parent/ Guardian/ Surrogate Parent/Adult Student

Priscilla Ramirez2-17-95

Date

WHITE-Exceptional Education Audit Folder

CANARY-Parent's Copy

PINK-Exceptional Education Teacher or Permanent Record folder, if student does not qualify

GOLDENROD-Exceptional Education Office

\*Denotes Required Items

ARD

Page 14 of 14



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CONFIDENTIAL

\*DATE OF MEETING:

3-29-15

COPY

West Oso Independent School District

- ☐ Admission  
☒ Review  
☐ Dismissal

## ADMISSION, REVIEW, AND DISMISSAL (ARD) COMMITTEE MEETING

Name	<u>John Dornier</u>	DOB	<u>6-29-84</u>	School	<u>Walden</u>	Grade	<u>5</u>
Parents	<u>Alayna + David</u>	Address	<u>438 Melina</u>	Phone	<u>855-6296</u>		
Gender	<u>M</u>	Ethnic	<u>H</u>	SS#	<u>454-71-36</u>	ID#	<u>20432</u> WkPh

- ☐ YES ☒ NO \*An interpreter was used to assist in conducting the meeting. If YES, specify language:

## \*REVIEW OF ASSESSMENT DATA (check (✓) if applicable)

☒ Assessment reports:

☒ Comprehensive individual assessment: 193, 195  
DATE(S) OF REPORT(S)

☐ Assessment(s) for related services Specify:

NAME OF SERVICE

DATE OF REPORT

NAME OF SERVICE

DATE OF REPORT

☐ Vocational assessment:

☐ Information from the student's Individual Transition Plan

☐ Records from other school districts Houston ISD.

☐ Information from parents/student

☒ Information from school personnel

☐ Information/records from other agencies or professionals

☐ YES ☒ NO Additional assessment is needed: none

Specify timeline for assessment to be completed: none

## \*DETERMINATION OF ELIGIBILITY (check (✓) if applicable)

Based on the assessment data reviewed, the committee has determined that the student:

☐ does not meet eligibility criteria to receive special education services.

☒ meets eligibility criteria for: 1) Speech Handicapped,

2) Learning Disabled,

<sup>1</sup>If additional assessment is recommended, it must be completed according to the timeline specified.

\* Denotes required items

3/92  
ARD-1

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Page \_\_\_\_\_ of \_\_\_\_\_

## DEVELOPMENT OF THE INDIVIDUAL EDUCATIONAL PLAN (IEP)

- ☒ YES ☐ NO • The ARD committee reviewed achievement on each previous year's short-term objectives on the IEP.  
(Applicable to all but initial ARD meetings.)

not applicable

## Present Competencies:

- Physical, as it affects participation in:

- instructional settings:

normal vision,  
hearing, no reg. medic.

- physical education:

- ☒ YES ☐ NO The student is capable of receiving instruction in the essential elements of physical education through the regular program without modification.
- Phyp. disability in tongue movement  
for adequate speech mobility - articulation

- Behavioral, as it affects:

- educational placement, programming, or disciplining:

limited task completion when not  
on instructional level. Improved  
behaviors in co operation with peers  
and self-regulation, attentiveness.

- ☒ YES ☐ NO The student is capable of following the Student Code of Conduct without modification. If NO, complete ARD/IEP SUPPLEMENT: Behavior Management Plan (ARD Sup-BMP 1 & 2).

contingent  
upon  
tongue  
surgery,  
(dipping)

- Prevocational/Vocational (when appropriate):

- skills which may be prerequisite to vocational education:

not age  
appropriate.

- Academic/Developmental (grade or age levels alone are not acceptable):

Perd. for math - works with reg. class  
Placement in reg. class  
with minimal modif. - written  
long. requires more extensive modif. for

- Indicate content areas in which the student's handicap significantly interferes with his/her ability to meet regular academic mastery levels:

Perd. Lang, Math  
Social Studies Science,  
Speech.

academic  
progress

\* Denotes required items

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☒ • Instructional Services☐ • Related Services  
Specify:•INDIVIDUAL EDUCATIONAL PLAN (IEP)<sup>1</sup>

Page \_\_\_\_\_ of \_\_\_\_\_

☒ Draft 3-29-95

DATE

☒ Accepted by ARD  
Committee

NAME OF STUDENT

John Ramirez

SCHOOL

Carl Allen

GRADE

5•Duration of services from: 3-30-95 to: 3/96  
mo/day/yr mo/yrPosition responsible for implementation  
(\*Required for related services):(review re-eval. spec.)reg. teachers•GOAL: Improve reg. Ed. Elec. cur. content skills  
with peers:•SHORT-TERM OBJECTIVES:  
THE STUDENT WILL BE ABLE TO:•CRITERIA AND EVALUATION  
PROCEDURES (INDICATE  
LEVEL OF MASTERY)<sup>2</sup>•SCHEDULE  
FOR  
EVALUATION(✓)  
IF  
META. acquire reg. Ed.  
Elec. cur. content  
skills in Read,  
Lang., math,  
social studies, &  
science with  
modifications.70%  
accuracyadapted  
book tests;  
teacher-  
made tests

6 wks.

Progress  
Reports<sup>1</sup>Goals and objectives should reflect essential elements where ARD committee deems appropriate.<sup>2</sup>Criteria and schedule must allow for determining student's eligibility for participation in extracurricular activities.

\*Denotes required items



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Page \_\_\_\_\_ of \_\_\_\_\_

## MODIFICATIONS DETERMINED BY ARD COMMITTEE

NAME OF STUDENT

John Ramirez

CAMPUS

Carl Allen

To assure coordination among regular, vocational, and special education, the checked adaptations have been approved by the ARD committee for the courses listed.

COURSE/CURRICULUM AREA

ADAPTATION

Behavior Management Plan

☐ YES ☒ NO

Regular Discipline Plan

☒ YES ☐ NO

☐ Modifications not needed or not applicable

COURSE/CURRICULUM AREA					ADAPTATION
<u>Science</u> <u>Joint Math</u> <u>Math</u> <u>Eng.</u> <u>Comp.</u>					1. Leave class for resource assistance
					2. Oral tests
					3. Short answer tests
					4. Modified tests <u>written</u>
					5. Taped texts
					6. Highlighted texts
					7. Taping lectures
					8. Note taking assistance
					9. Extended time for completion of assignments <u>written</u>
					10. Shortened assignments
					11. Assignment notebooks
					12. Peer tutoring
					13. Study sheets
					14. Repeated review <u>written</u>
					15. Reduced pencil/paper tasks
					16. Calculators
					17. Preferential seating
					18. Interpreter for the deaf
					19. Frequent breaks
					20. Defined limits
					21. Cooling off period
					22. Concrete reinforcers
					23. Positive reinforcers
					24. Behavior management systems
					25. Special instructional or adaptive equipment: <u>assist. tech.</u>
					26. Increased verbal response time
					27. Directions given in a variety of ways
					28. Adjustments for misarticulation in responses <u>th r v s</u>
					29. Alternative materials
					30. Other:
					31. Other:
					32. Other:
					33. Other:

ADMINISTRATOR

ASSESSMENT

\*Denotes required items

Victor FormAnnette M. Mendez21st J. Garoszewski

TEACHER

DATE

Christine SmithMarch 29, 1995

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John Ramirez

## MATERIALS FOR STUDENTS WITH LEARNING PROBLEMS

### TACTILE-KINESTHETIC LEARNERS

Use real objects, models, three dimensional objects, and manipulative materials that can be touched and moved.

computers  
globes  
fingerprints  
models  
relief maps  
textured letters

typewriters  
abacus  
felt pens  
calculators  
pocket charts

### VISUAL LEARNERS

Flashcards  
filmstrips  
Rebus stories  
hookboard

movies  
charts, graphs, tables  
pocket charts

### AUDITORY LEARNERS

Language Master  
Speak'n Spell  
records  
audio visual aids  
pocket charts

tape recorder  
Speak'n Math  
cassette tapes  
movies  
hookboard

*Multi-Modality  
Approach*

WEST OSO I.S.D.  
SPECIAL EDUCATION DEPT.  
SPEECH/HEARING THERAPIST  
5050 ROCKFORD DR.  
CORPUS CHRISTI, TEXAS 78416  
(512) 855-3321

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ADAPTING TEXTBOOKS

WEST OSO I.S.D.  
SPECIAL EDUCATION DEPT.  
SPEECH/HEARING THERAPIST  
5050 ROCKFORD DR.  
CORPUS CHRISTI, TEXAS 78416  
(512) 855-3321

Adapting textbooks is necessary to provide materials at a level the student can master.

1. The simplest adaptation of a text is to tape it.
2. Highlighting the main ideas and key concepts.
3. The cut and paste technique. Only the main ideas or specific content are cut from the text and pasted on separate sheets of paper.  
Material can be arranged sequentially.  
Additional heading and key words can be added.  
Small parts can be presented singly.  
Eliminates the task of recopying.
4. Transforming printed words into graphic aids.  

Charts	Maps	Models
Graphs	Illustrations	Concrete materials
5. Materials can be reorganized. Small bits of information can be grouped into classifications or relationships to help students learn. Ideas, tasks, and directions should be arranged sequentially to aid memory. The former technique is called "chunking".
6. Advanced Organizers prepare the student for the material he is about to read.  
Outlines  
Diagrammatic overviews  
Study guides  
Questions at end of chapter  
Directed previewing: charts, headings, etc.



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~~MODIFICATIONS OF TESTS~~

for written tests

WEST OSO L.S.D.  
SPECIAL EDUCATION DEPT.  
SPEECH/HEARING THERAPIST  
5050 ROCKFORD DR.  
CORPUS CHRISTI, TEXAS 78416  
(512) 855-3321

*John Ramirez*

1. Too much detail may confuse and distract.
2. Group material into small sections, separating questions with lines.
3. Space the items on the page to avoid crowding.
4. Limit the number of choices to three or four on multiple choice tests.
5. Put the blank at the end of the sentence in fill-in-the-blank questions.
6. Limit matching to no more than ten items in one section.
7. Match the length of test to student's work period.
8. Allow extra time to take the test.
9. Supply diagrams or charts when applicable.
10. Allow book markers to help with visual placement.
11. Allow answers in the student's own words. This ensures understanding.

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☒ • Instructional Services☐ • Related Services  
Specify:•INDIVIDUAL EDUCATIONAL PLAN (IEP)<sup>1</sup>

Page \_\_\_\_\_ of \_\_\_\_\_

☒ Draft 3-29-95

DATE

☒ Accepted by ARD  
Committee

NAME OF STUDENT

John Ramirez

SCHOOL

Carl Allen

GRADE

5•Duration of services from: 3-30-95  
mo/day/yrto: 3/96  
mo/yrPosition responsible for implementation  
(\*Required for related services):Speech Therapist / Reg + Sp Ed. Tech•GOAL: Improve Oral Language Communication

Inclusion: Level III •SHORT-TERM OBJECTIVES: THE STUDENT WILL BE ABLE TO: 15 min mthly	•CRITERIA AND EVALUATION PROCEDURES (INDICATE LEVEL OF MASTERY) <sup>2</sup>	•SCHEDULE FOR EVALUATION	(✓) IF MET
1) Develop Language Form to use basic sentence patterns spontaneously	70% mastery	bi-week Report Card	
2) Develop Language Content: a) to comprehend and produce vocabulary through category association b) to comprehend and produce "yes/no" and "wh" questions	Teacher Observation  Student Participation	5/96 5th Re-Eval  do 3/96	
3) Develop Language Use: a) to take turns in a conversation b) to maintain and conclude topics c) to comprehend classroom information	Teacher- made task		

<sup>1</sup>Goals and objectives should reflect essential elements where ARD committee deems appropriate.<sup>2</sup>Criteria and schedule must allow for determining student's eligibility for participation in extracurricular activities.

•Denotes required items

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## \*SERVICES TO BE PROVIDED

Page \_\_\_\_\_ of \_\_\_\_\_

*curr. (J. L.)*

INSTRUCTION				PROGRESS/GRADE DETERMINED BY:				
COURSE/CURRICULUM AREA	REG. ED. MODIFIED		REG. ED. TIME	SP. ED. TIME	REG. ED.	SP. ED.	JOINT	COMMENT
	YES	NO						
<i>Read</i>	<input checked="" type="checkbox"/>		<i>1.0</i>		<input checked="" type="checkbox"/>			
<i>Lang</i>	<input checked="" type="checkbox"/>		<i>1.0</i>		<input checked="" type="checkbox"/>			
<i>Math</i>	<input checked="" type="checkbox"/>		<i>1.0</i>		<input checked="" type="checkbox"/>			
<i>social studies</i>	<input checked="" type="checkbox"/>		<i>1.0</i>		<input checked="" type="checkbox"/>			
<i>science</i>		<input checked="" type="checkbox"/>	<i>1.0</i>		<input checked="" type="checkbox"/>			
<i>fine arts/PE</i>		<input checked="" type="checkbox"/>	<i>0.0</i>		<input checked="" type="checkbox"/>			
<i>Speech Therapy</i>								

RELATED SERVICES	AMOUNT OF TIME PER WEEK
<i>none</i>	

*joint*  
COORDINATION BETWEEN REG. ED. AND SP. ED.

Responsibility for monitoring student's performance in regular education:

Frequency: *joint*

Method: *conferences, progress reports*

Schedule for evaluating progress for participation in extracurricular activities will be:

3wks \_\_\_ 6wks ☒ other \_\_\_

☐ YES ☒ NO Special Transportation \*If YES, cite justification:

<p>*Criterion referenced assessment (TAAS):</p> <p><input checked="" type="checkbox"/> will take mathematics</p> <p><input checked="" type="checkbox"/> will take writing</p> <p><input checked="" type="checkbox"/> will take reading</p> <p><input type="checkbox"/> not offered for this student's grade placement</p> <p><input checked="" type="checkbox"/> exempt in all areas</p> <p>** Modifications as defined in test administration materials:</p> <p>_____</p> <p>_____</p> <p>_____</p>	<p>Assistive Technology has been considered for this student. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>This student qualifies for Assistive Technology: <i>yes</i></p> <p><input checked="" type="checkbox"/> No <input type="checkbox"/> Yes</p> <p>_____</p> <p>_____</p> <p>_____</p>
--	--

<sup>1</sup>ARD Committee decisions should be consistent with NAPT procedures

\*\* Modifications needed to assure success in regular, remedial, and supportive programs including eligibility for participation in extracurricular activities are specified on the following page.

\*Denotes required items



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## DETERMINATION OF PLACEMENT

Page \_\_\_\_ of \_\_\_\_

Placement alternatives reviewed including services in regular education, bilingual education/English as a second language, and compensatory education for which the student is eligible and additional services discussed (Include consideration of occupational training needs for students at or before entry into high school or by age 14):

<input type="checkbox"/> Chapter 1 Compensatory	<input type="checkbox"/> Special Education Resource	<input type="checkbox"/> Homebound Services	<input type="checkbox"/> Regular Vocational
<input type="checkbox"/> Bilingual/ESL	<input type="checkbox"/> Special Education S/C or P/SC	<input type="checkbox"/> VAC	<input type="checkbox"/> Additional Sp. Ed. hours
<input type="checkbox"/> Regular Education	<input type="checkbox"/> Separate Special Ed. Campus	<input type="checkbox"/> Other: _____	
<input type="checkbox"/> Modified Regular Ed.			

☐ ☒ Parents have been provided information about the Texas School for the Blind and Visually Impaired or Texas School for the Deaf if student is visually or auditorially handicapped or deaf-blind. *not applied*

NOTE: ARD/IEP SUPPLEMENT LEAST RESTRICTIVE ENVIRONMENT JUSTIFICATION SHOULD BE COMPLETED BEFORE IDENTIFYING CAMPUS AND INSTRUCTIONAL ARRANGEMENT IF STUDENT IS TO BE IN SPECIAL EDUCATION CLASSES FOR 50% OR MORE OF SCHOOL DAY.

The committee determined that the student's placement will be at:

NAME OF SCHOOL CAMPUS

NAME OF INSTRUCTIONAL ARRANGEMENT?

☒ ☐ This is the campus which the student would attend if not handicapped. If NO justify: *speech 001*

## ASSURANCES

The committee assures that special education placement:

- \* is as close as possible to the student's home.
- \* for national origin minority group students or linguistically different students is not based on criteria which were developed solely on command of the English language.

\*Basis for assurance:

- ☐ adaptations in testing procedures
- ☐ use of interpreter
- ☐ review of parent/student information
- ☒ review of language assessment

- \* is not based on deficiencies identified as directly attributable to a different culture, lifestyle, or lack of educational opportunities.

\*Basis for assurance:

- ☐ review of parent/student information
- ☒ review of sociological assessment

The ARD committee assures that this student is being educated with students his/her age who do not have handicaps to the maximum extent appropriate to his/her overall educational needs (including academic and developmental areas such as language and socialization).

The committee assures that all instructional and related services specified in the IEP will be provided to the student at no cost. Fees normally charged to nonhandicapped students or their parents, as part of the general education program, may be charged (i.e., art or laboratory fees).

NOTE: IF APPROPRIATE, COMPLETE ARD/IEP SUPPLEMENT: OUT-OF-DISTRICT PLACEMENT VERIFICATION (ARD SUP-OD) OR REFERRAL TO A REGIONAL DAY SCHOOL PROGRAM FOR THE DEAF (ARD SUP-RDSPD).

<sup>1</sup> Required only for initial placement.

<sup>2</sup> Enter instructional arrangement that meets requirements listed in the Texas Daily Register of Student Attendance.

\* Denotes required items

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SIGNATURES OF COMMITTEE MEMBERS

Page \_\_\_\_\_ of \_\_\_\_\_

Signature	Position	Agree	Disagree
<i>Deborah Alvarado</i>	Parent/Adult Student	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Victor Pro</i>	Administration	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Christina Smith</i>	Instruction <i>reg.</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Sham Musid</i>	Special Education <i>Monitor</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Annette M. Mendez</i>	Assessment <i>Speech</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>E. J. Jurezowski</i>	<i>assessment</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

☒ This IEP has been developed by the members of the ARD committee by mutual agreement.

☐ The members of this ARD committee have not reached mutual agreement. The school has offered and the parent has agreed to a recess of not more than 10 school days. During the recess the members shall consider alternatives, gather additional data, and/or obtain additional resource persons to enable them to reach mutual agreement. This recess does not apply if the student presents a danger of physical harm to himself or herself or others, or if the student has committed an expellable offense. The committee will reconvene on \_\_\_\_\_ at \_\_\_\_\_<sup>2</sup> Statements of the reason mutual agreement has not been reached may be attached.

\* Your rights were explained to you when you received the current copy of the booklet, Special Education: Parent and Student Rights. Please refer to page vi of this booklet for information on procedural safeguards.

\* FOR INITIAL PLACEMENT

- ☐ YES ☐ NO \* I have received and reviewed the admission, review, and dismissal (ARD) committee report, dated \_\_\_\_\_, that has been prepared for: \_\_\_\_\_ NAME OF STUDENT
- ☐ YES ☐ NO \* I understand and agree with the ARD committee's decision and give my permission for the educational placement that has been proposed for my child/me.
- ☐ YES ☐ NO \* I understand that my consent for placement is voluntary and may be withdrawn anytime. However, if I revoke consent after initial placement, my child's/my placement will not change unless:
- the school and I agree otherwise (following ARD committee procedures); or
  - a due process hearing resolves the dispute.

\* SIGNATURE OF PARENT, GUARDIAN, SURROGATE PARENT, OR ADULT STUDENT

DATE

SIGNATURE OF INTERPRETER, IF USED

DATE

<sup>1</sup> Assessment personnel are required when interpretations of assessment data are being considered.

<sup>2</sup> Include documentation concerning the reconvened ARD.

\* Denotes required items

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DX-4

MARY LOPEZ BUITRON, CSR, RPR  
*Official Court Reporter - 94th District Court*



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001

**PATSY PEREZ**  
**DISTRICT CLERK**



DISTRICT COURTS / COUNTY COURTS AT LAW  
901 LEOPARD STREET, ROOM 313  
CORPUS CHRISTI, TEXAS 78401  
361 888-0450 Fax 888-0571

ENCLOSED ARE THE COPIES OF FEE SHEETS THAT YOU REQUESTED ON  
GRANT JONES AND EDWARD GARZA, PERTAINING TO CAUSE NUMBER  
04-CR-3453-C, JOHN HENRY RAMIREZ.....

THANK YOU

JOHN SAAVEDRA

**DEFENDANT'S  
EXHIBIT**

4

Received Time Sep. 19. 10:31AM • CORPUS CHRISTI, TEXAS 78403

09/19/2011 09:42 FAX

002

Attorney Fee Voucher Nueces County District Courts Court # <u>94th</u>		PO#	INSTRUCTIONS Show only one cause number per defendant. Each claim must be printed or typed. Please do not use black ink. Itemized statement on services rendered is required. See page 2. Submit separate claims for investigations, expert witness costs and other expenses. Forward completed claim to the court for approval.		Page 1 of 2
Cause No.: <u>04-CR-3453-C</u>		Offense: <u>CAPITAL MURDER + ROBBERY</u>		Degree: <u>CM</u>	
In the case of: State of Texas vs <u>JOHN HENRY RAMIREZ</u>		AG#			
Case Level: <input type="checkbox"/> Felony (CR) <input type="checkbox"/> Misdemeanor (CR) <input type="checkbox"/> Revocation-Felony (CR) <input type="checkbox"/> Revocation-Misdemeanor (CR) <input type="checkbox"/> Dismissal (CR) <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Appeal (APA) <input type="checkbox"/> Juvenile (JUV) <input checked="" type="checkbox"/> Capital Case (CM) <input type="checkbox"/> No Charges Filed (AR) <input type="checkbox"/> Divert/Other:					
		Total Number of Hours/Days	Authorized Rates	Not to Exceed	
Guilty Plea or Plea of True	In court		\$250 to \$450		Sub-total
	Out of court		Flat fee		\$
Dismissal on State's Motion	In court		\$100 to \$400		Sub-total
	Out of court		Flat fee		\$
Nonjury Trial and Contested Hearings	In court		\$60 to \$80/hr		Sub-total
	Out of court		\$30 to \$60/hr		\$
Jury Trial	In court		\$500 to \$750/day \$250 to \$375/half		Sub-total
	Out of court		\$30 to \$50/hr		\$
Direct Appeal or Discretionary Review	Death sentence case		\$50 to \$75/hr	\$10,000	Sub-total
	Non-death capital, first or second degree case		\$50 to \$75/hr	\$3,000	
	Third degree or state jail case		\$50 to \$75/hr	\$2,500	
	Misdemeanor case		\$50 to \$75/hr	\$1,500	
Reimbursable costs (Please itemize on Page 2)					\$
Total					\$
Attorney Name: <u>Edward F. Garza</u>		Vendor No.: <u>V-04084</u>			
E-Mail Address: <u>EGGARZA@STX.RR.COM</u>		For County Auditor Use			
Mailing Address (Number, Street, Suite, City, State, Zip Code): <u>719 S. Shoreline #201</u> <u>CC. TEXAS 78401</u>		Dept. Key Code: <u>3320-5344</u>		Secondary Reference: <u>CM</u>	
State Bar Number: <u>07731200</u>		Telephone Number: <u>(361) 888-8877</u>		Fax Number: <u>(361) 888-8879</u>	
I, the undersigned attorney, certify that the above information is true and correct and in accordance with the laws of the State of Texas. The compensation and expenses claimed were reasonable and necessary to provide effective assistance of counsel. I further swear or affirm that I have not received nor will receive any money or anything else of value for representing the accused, except as otherwise disclosed to the Court in writing.					
Time Period of Services Rendered: From <u>2-29-08</u> to <u>5-30-08</u> (Complete Page 2)					
Have previous vouchers been submitted for this case? YES or <u>(NO)</u> If yes, PO# required above.					
Signature and Date: <u>Edward F. Garza</u> <u>6-18-08</u> Is this voucher for: <input type="checkbox"/> Final payment or <input checked="" type="checkbox"/> Partial payment?					
SIGNATURE OF TRIAL JUDGE: <u>[Signature]</u>		<u>Bl Patsy Perez</u> <u>Condy &amp; Martinez</u>			
Reason(s) for Denial or Variation:		Date: <u>6/20/08</u>	Amount: <u>7540.00</u>	Recorded by: <u>Patsy Perez, District Clerk by Deputy District Clerk</u>	

✓ Copy Received Time Sep. 19. 10:31AM  
 Attorney Form 2007

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**CAUSE NO. 04-CR-3453-C**

<b>THE STATE OF TEXAS</b>	<b>§</b>	<b>IN THE DISTRICT COURT</b>
<b>VS.</b>	<b>§</b>	<b>94<sup>TH</sup> JUDICIAL DISTRICT</b>
<b>JOHN HENRY RAMIREZ</b>	<b>§</b>	<b>NUECES COUNTY, TEXAS</b>

**EXHIBIT IN SUPPORT OF REASONABLE FEES**  
**FOR CAPITAL MURDER CASE**

<b><u>DATE</u></b>	<b><u>ACTION TAKEN</u></b>	<b><u>TIME</u></b>
02/29/2008	COURT APPEARANCE BY CLIENT TO APPOINT COUNSEL.	00.50
02/29/2008	CONFERRED WITH CLIENT AT COUNTY JAIL AFTER BEING APPOINTED AS COUNSEL.	01.50
03/04/2008	CONFERRED WITH CLIENT'S FAMILY AT OFFICE.	01.50
03/06/2008	CONFERRED WITH ASSISTANT D.A. SKURKA RE: DISCOVERY PACKET, JURY QUESTIONAIRES.	00.50
03/06/2008	CONFERRED WITH CLIENT AT COUNTY JAIL.	01.00
03/14/2008	CONFERRED WITH CLIENT AT COUNTY JAIL.	01.00
03/21/2008	CONFERRED WITH CLIENT AT COUNTY JAIL.	01.00
03/28/2008	CONFERRED WITH CLIENT AT COUNTY JAIL.	01.00
04/04/2008	CONFERRED WITH CLIENT AT COUNTY JAIL.	01.00
04/11/2008	CONFERRED WITH CLIENT AT COUNTY JAIL.	01.00
04/17/2008	CONFERRED WITH CO-COUNSEL GRANT JONES RE: TRIAL STRATEGY, AND DRAFTED MOTIONS FOR EXPERTS.	03.00

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04/18/2008	CONFERRED WITH CLIENT AT COUNTY JAIL.	01.00
04/24/2008	CONFERRED WITH ASSISTANT D.A. SKURKA RE: DISCOVERY AND DNA.	00.50
04/29/2008	JAIL VISIT WITH CLIENT RE: ADDITIONAL MOTIONS, DISCOVERY AND INVESTIGATION.	00.20
04/30/2008	STATUS HEARING & CONFERRED WITH CLIENT.	04.00
05/02/2008	CONTINUE REVIEWING DISCOVERY.	02.00
05/03/2008	CONTINUE REVIEWING DISCOVERY.	03.00
05/14/2008	CONFERRED WITH CO-COUNSEL JONES RE: EXPERTS AND EX-PARTE MOTION, AND CONFERRED WITH MITIGATION EXPERT.	04.00
05/16/2008	DRAFTED MOTIONS FOR MITIGATION EXPERT, PSYCHOLOGIST AND INVESTIGATOR.	01.50
05/18/2008	RESEARCHED AND READ LEGAL MATERIALS RE: MITIGATION EVIDENCE FOR CAPITAL MURDER CASES.	05.00
05/21/2008	FILED EX-PARTE MOTIONS, CONFERRED WITH COURT RE: EXPERTS.	01.50
05/27/2008	CONFERRED WITH CLIENT AT COUNTY JAIL.	01.00
05/30/2008	CONFERRED WITH CLIENT AND DELIVERED DISCOVERY AND OTHER LEGAL ARTICLES.	01.00
<b>TOTAL HOURS:</b>		<b><u>37.70</u></b>

**ATTORNEY SUBMITS THIS REASONABLE FEE APPLICATION  
FOR 37.70 HOURS AT THE STATUTORY FEE OF \$200.00 PER HOUR: \$7,540.00**

**TOTAL: 7,540.00**

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Attorney Fee Voucher		PO#	INSTRUCTIONS	
Nueces County District Courts			Show only one cause number per defendant. Each claim must be printed or typed. Please do not use black ink. Itemized statement on services rendered is required. See page 2. Submit separate claims for investigations, expert witness costs and other expenses. Forward completed claim to the court for approval.	
Court # <u>94th DIST CT</u>		(One PO# per case.)		
Cause No.: <u>041-CR-3453-C</u>	Offense: <u>CAPITAL MURDER</u>	Degree: <u>D/P</u>		
In the case of: State of Texas vs <u>JOHN HENRY RAMIREZ</u>		AG#		
Case Level: <input type="checkbox"/> Felony (CR) <input type="checkbox"/> Misdemeanor (CR) <input type="checkbox"/> Revocation-Felony (CR) <input type="checkbox"/> Revocation-Misdemeanor (CR) <input type="checkbox"/> Dismissal (CR) <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Appeal (APA) <input type="checkbox"/> Juvenile (JUV) <input checked="" type="checkbox"/> Capital Case (CM) <input type="checkbox"/> No Charges Filed (AR) <input type="checkbox"/> Divert/Other:				
		Total Number of Hours/Days	Authorized Rates	Not to Exceed
Guilty Plea or Plea of True	In court		\$250 to \$450	
	Out of court		Flat fee	
Dismissal on State's Motion	In court		\$100 to \$400	
	Out of court		Flat fee	
Nonjury Trial and Contested Hearings	In court		\$60 to \$80/hr	
	Out of court		\$30 to \$60/hr	
Jury Trial	In court		\$500 to \$750/day \$250 to \$375/half	
	Out of court		\$30 to \$50/hr	
Direct Appeal or Discretionary Review	Death sentence case		\$50 to \$75/hr	\$10,000
	Non-death capital, first or second degree case		\$50 to \$75/hr	\$3,000
	Third degree or state jail case		\$50 to \$75/hr	\$2,500
	Misdemeanor case		\$50 to \$75/hr	\$1,500
Reimbursable costs (Please itemize on Page 2) Total:				
Attorney Name: <u>Edward F. Garza</u>		Vendor No.: <u>V-04084</u>		
E-Mail Address: <u>EPGARZA@STX.PR.COM</u>		For County Auditor Use		
Mailing Address (Number, Street, Suite, City, State, Zip Code): <u>719 S. SHORELINE #201</u> <u>CIA TEXAS 78401</u>		Dept - Key Code: <u>3320-5346</u>		Secondary Reference: <u>CM</u>
State Bar Number: <u>07731200</u>		Telephone Number: <u>(361) 888-8877</u>		Fax Number: <u>(361) 888-8879</u>
I, the undersigned attorney, certify that the above information is true and correct and in accordance with the laws of the State of Texas. The compensation and expenses claimed were reasonable and necessary to provide effective assistance of counsel. I further swear or affirm that I have not received nor will receive any money or anything else of value for representing the accused, except as otherwise disclosed to the Court in writing.				
Time Period of Services Rendered: From <u>6-13-08</u> to <u>11-20-08</u> (Complete Page 2)				
Have previous vouchers been submitted for this case? <input checked="" type="checkbox"/> YES or <input type="checkbox"/> NO If yes, PO# required above. Is this voucher for: <input type="checkbox"/> Final payment or <input checked="" type="checkbox"/> Partial payment?				
SIGNATURE OF TRIAL JUDGE: <u>Patry</u> <u>Cindy of Marting</u> Reason(s) for Denial or Variation: <u>12/13/08</u> Date: <u>12/13/08</u>				
Recorded by: <u>Felipe Perez</u> , District Clerk by Deputy District Clerk (Signature)				

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## CAUSE NO. 04-CR-3453-C

THE STATE OF TEXAS	§	IN THE DISTRICT COURT
	§	
VS.	§	94 <sup>TH</sup> JUDICIAL DISTRICT
	§	
JOHN HENRY RAMIREZ	§	NUECES COUNTY, TEXAS

**EXHIBIT IN SUPPORT OF REASONABLE FEES**  
**FOR CAPITAL MURDER CASE**

<u>DATE</u>	<u>ACTION TAKEN</u>	<u>TIME</u>
06/13/08	CONFERRED WITH CLIENT AT COUNTY JAIL.	00.50
06/18/08	CONFERRED WITH CO-COUNSEL JONES & INVESTIGATOR BARRERA.	01.00
06/20/08	CONFERRED WITH CLIENT AT COUNTY JAIL.	00.50
07/10/08	CONFERRED WITH CLIENT & INVESTIGATOR BARRERA AT COUNTY JAIL.	01.00
07/18/08	CONFERRED WITH CLIENT & INVESTIGATOR BARRERA AT COUNTY JAIL.	01.00
07/30/08	CONFERRED WITH CLIENT & INVESTIGATOR BARRERA AT COUNTY JAIL.	01.00
08/05/08	CONFERRED WITH CLIENT, INVESTIGATOR BARRERA & DR. TROY MARTINEZ.	01.00
08/07/08	OBTAINED & REVIEWED AUDIO TAPE OF 911 DISPATCH CALL; VIDEO STATEMENT OF ANGELA RODRIGUEZ; VIDEO STATEMENT OF CHRISTINA CHAVEZ; NEWS REPORTS OF FOOTAGE FROM CHANNEL 6 NEWS.	03.00
08/15/08	CONFERRED WITH INVESTIGATOR BARRERA & DR. TROY MARTINEZ.	01.50

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08/20/08	MET WITH CO-COUNSEL JONES, 1 <sup>ST</sup> ASSISTANT D.A. SKURKA & 94 <sup>TH</sup> DISTRICT JUDGE BOBBY GALVAN TO DISCUSS AND CONFER ABOUT NEW PRE-TRIAL & TRIAL DATES.	01.00
09/05/08	OBTAINED & REVIEWED WRITTEN TRANSCRIPT OF CO- DEFENDANT'S.	02.00
09/06/08	CONFERRED WITH CLIENT AT COUNTY JAIL RE: NEW TRIAL DATES AND NEW DISCOVERY MATTERS.	01.00
09/19/08	CONFERRED WITH CLIENT AT COUNTY JAIL RE: MORE DISCOVERY MATTERS.	01.00
09/26/08	CONFERRED WITH CLIENT AT COUNTY JAIL RE: UPCOMING PRE-TRIAL MOTIONS HEARING.	01.00
10/03/08	PRE-TRIAL MOTIONS HEARING RE: IDENTITY.	03.00
10/07/08	CONFERRED WITH INVESTIGATOR BARRERA RE: TRIAL STRATEGY.	01.00
10/08/08	CONFERRED WITH CLIENT AND INVESTIGATOR BARRERA AT COUNTY JAIL RE: UPCOMING GENERAL VOIR DIRE.	01.00
10/22/08	GENERAL VOIR DIRE; PASSED OUT QUESTIONNAIRE.	05.00
10/24/08	OBTAINED BOXES OF COPIES QUESTIONNAIRES.	00.50
10/25/08	READ AND REVIEWED QUESTIONNAIRES.	03.00
10/26/08	CONTINUED READING & REVIEWING QUESTIONNAIRES.	04.00
10/29/08	PRE-TRIAL RE: EXTRANEOUS MATTERS & 404B MATERIAL.	01.00
10/29/08	CONTINUED READING & REVIEWING QUESTIONNAIRES.	04.00
10/30/08	CONTINUED READING & REVIEWING QUESTIONNAIRES; MADE & COMPANIES NOTES FROM ASSISTANT D.A. SKURKA RE: AGREED SETTLES FOR CAUSE.	04.00

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11/04/08	PRE-TRIAL RE: AGREED STRIKES FOR CAUSE; MATTERS READ INTO THE RECORD.	00.50
11/07/08	CONFERRED WITH CO-COUNSEL JONES AND INVESTIGATOR BARRERA AT OFFICE RE: TELE- CONFERENCE CALL WITH DR. MARTINEZ.	01.00
11/10/08	INDIVIDUAL VOIR DIRE; JURY SELECTION BEGINS.	08.50
11/10/08	READ & REVIEWED NEXT DAYS QUESTIONAIRES.	01.00
11/12/08	INDIVIDUAL VOIR DIRE CONTINUES.	08.00
11/12/08	READ & REVIEWED NEXT DAYS QUESTIONAIRES.	01.00
11/13/08	INDIVIDUAL VOIR DIRE CONTINUES.	04.50
11/13/08	READ & REVIEWED NEXT DAYS QUESTIONAIRES.	01.00
11/14/08	INDIVIDUAL VOIR DIRE CONTINUES.	08.00
11/14/08	READ & REVIEWED NEXT DAYS QUESTIONAIRES.	01.00
11/14/08	CONFERRED WITH CLIENT AFTER VOIR DIRE AT COUNTY JAIL AND CONFERRED WITH INVESTIGATOR BARRERA RE: SUBPOENAS.	01.50
11/16/08	REVIEWED JURY QUESTIONAIRES FOR NEXT WEEK.	02.00
11/17/08	INDIVIDUAL VOIR DIRE CONTINUES.	10.00
11/17/08	READ & REVIEWED NEXT DAYS QUESTIONAIRES.	01.00
11/18/08	INDIVIDUAL VOIR DIRE CONTINUES.	08.00
11/18/08	READ & REVIEWED NEXT DAYS QUESTIONAIRES.	01.00
11/19/08	INDIVIDUAL VOIR DIRE CONTINUES.	04.50
11/20/08	OFFICE MEETING WITH CO-COUNSEL JONES, INVESTIGATOR BARRERA & DR. MARTINEZ.	02.00

08 DEC -3 6H 3 30  
 TOTAL HOURS: 107.50  
 TOTAL HOURS @ \$200.00 = \$21,500.00

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Attorney Fee Voucher		PO#	INSTRUCTIONS		Page 1 of 2
Nueces County District Courts			Show only one cause number per defendant. Each claim must be printed or typed. Please do not use black ink. Itemized statement on services rendered is required. See page 2. Submit separate claims for investigations, expert witness costs and other expenses. Forward completed claim to the court for approval.		
Court # <u>94th</u>		(One PO# per case.)			
Cause No.: <u>04-CR-3453-C</u>		Offense: <u>CAPITAL MURDER</u>	Degree: <u>CM</u>		
In the case of: State of Texas vs <u>JOHN HENRY RAMIREZ JR</u> AG#					
Case Level: <input type="checkbox"/> Felony (CR) <input type="checkbox"/> Misdemeanor (CR) <input type="checkbox"/> Revocation-Felony (CR) <input type="checkbox"/> Revocation-Misdemeanor(CR) <input type="checkbox"/> Dismissal (CR) <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Appeal (APA) <input type="checkbox"/> Juvenile (JUV) <input checked="" type="checkbox"/> Capital Case (CM) <input type="checkbox"/> No Charges Filed (AR) <input type="checkbox"/> Divert/Other:					
		Total Number of Hours/Days	Authorized Rates	Not to Exceed	
Guilty Plea or Plea of True	In court		\$250 to \$450		Sub-total
	Out of court		Flat fee		\$
Dismissal on State's Motion	In court		\$100 to \$400		Sub-total
	Out of court	<u>See Attached EXHIBIT</u>	Flat fee		\$
Nonjury Trial and Contested Hearings	In court		\$60 to \$80/hr		Sub-total
	Out of court		\$30 to \$60/hr		\$
Jury Trial	In court		\$500 to \$750/day \$250 to \$375/half		Sub-total
	Out of court		\$30 to \$50/hr		\$
Direct Appeal or Discretionary Review	Death sentence case		\$50 to \$75/hr	\$10,000	
	Non-death capital, first or second degree case		\$50 to \$75/hr	\$3,000	
	Third degree or state jail case		\$50 to \$75/hr	\$2,500	
	Misdemeanor case		\$50 to \$75/hr	\$1,500	\$
Reimbursable costs (Please itemize on Page 2)					\$
Total					\$
Attorney Name: <u>EDWARD F. GARZA</u>		Vendor No.: <u>V-04084</u>			
E-Mail Address: <u>EGARZA@STX.PR.COM</u>		Dept - Key Code: <u>3220-5344</u>		For County Auditor Use	
Mailing Address (Number, Street, Suite, City, State, Zip Code): <u>719 S. SHORELINE #201</u> <u>SEATTLE, WA 98141</u>		Telephone Number: <u>779-234</u>		Secondary Reference: <u>CR</u>	
State Bar Number: <u>07731200</u>		Fax Number: <u>(361) 888-8877</u>			
I, the undersigned attorney, certify that the above information is true and correct and in accordance with the laws of the State of Texas. The compensation and expenses claimed were reasonable and necessary to provide effective assistance of counsel. I further swear or affirm that I have not received nor will receive any money or anything else of value for representing the accused, except as otherwise disclosed to the Court in writing.					
Time Period of Services Rendered: From <u>11-24-08</u> to <u>12-10-08</u> (Complete Page 2)					
Have previous vouchers been submitted for this case? YES or NO If yes, PO# required above. In this voucher for: <input checked="" type="checkbox"/> Final payment or <input type="checkbox"/> Partial payment?					
SIGNATURE OF TRIAL JUDGE: <u>[Signature]</u>		Signature and Date: <u>Edward F. Garza</u>			
Reason(s) for Denial or Variation:		Amount: <u>10,100.00</u>		Recorded by: <u>Patsy Perez</u> District Clerk by Deputy District Clerk (Signature)	

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## CAUSE NO. 04-CR-3453-C

THE STATE OF TEXAS	§	IN THE DISTRICT COURT
	§	
VS.	§	94 <sup>TH</sup> JUDICIAL DISTRICT
	§	
JOHN HENRY RAMIREZ	§	NUECES COUNTY, TEXAS

**EXHIBIT IN SUPPORT OF REASONABLE FEES**  
**FOR CAPITAL MURDER CASE**

<u>DATE</u>	<u>ACTION TAKEN</u>	<u>TIME</u>
11/24/08	CONFERRED WITH CO-COUNSEL JONES & INVESTIGATOR BARRERA AT OFFICE IN PREPARATION FOR START OF TRIAL.	01.00
11/24/08	INTERVIEWED MATERNAL GRANDMOTHER, MRS. ALEJANDRO IN PREPARATION FOR HER TESTIMONY RE: MITIGATION.	01.50
11/24/08	CONFERRED WITH CLIENT AT COUNTY JAIL TO DISCUSS TRIAL.	01.50
11/30/08	REVIEWED DISCOVERY & WITNESS STATEMENT IN PREPARATION FOR START OF TESTIMONY NEXT DAY.	03.00
12/01/08	1 <sup>ST</sup> DAY OF TRIAL.	07.00
12/02/08	2 <sup>ND</sup> DAY OF TRIAL.	07.00
12/03/08	3 <sup>RD</sup> DAY OF TRIAL.	07.00
12/04/08	4 <sup>TH</sup> DAY OF TRIAL.	07.00
12/05/08	5 <sup>TH</sup> DAY OF TRIAL.	07.00
12/07/08	CONFERRED WITH CO-COUNSEL JONES & DR. MARTINEZ AT OFFICE RE: CASE	02.00

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12/07/08	CONFERRED WITH CLIENT, CO-COUNSEL JONES AND DR. TROY MARTINEZ AT COUNTY JAIL.	01.00
12/08/08	6 <sup>TH</sup> DAY OF TRIAL.	04.50
12/10/08	CONFERRED WITH APPEALS LAWYER LARRY WARNER VIA TELEPHONE RE: POTENTIAL APPELLATE ISSUES.	01.00

<b>TOTAL HOURS:</b>	<b>50.50</b>
<b>TOTAL HOURS @ \$200.00 =</b>	<b><u>\$10,100.00</u></b>

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Attorney Fee Voucher Nueces County District Courts Court # 94th		PO#	INSTRUCTIONS Show only one cause number per defendant. Each claim must be printed or typed. Please do not use black ink. Itemized statement on services rendered is required. See page 2. Submit separate claims for investigations, expert witness costs and other expenses. Forward completed claim to the court for approval.		Page 1 of 2
Cause No.: 04-CR-3453-C		Offense: Capital Murder / Death Penalty		Degree: Capital	
In the case of: State of Texas vs John Ramirez AG#					
Case Level: <input type="checkbox"/> Felony (CR) <input type="checkbox"/> Misdemeanor (CR) <input type="checkbox"/> Revocation-Felony (CR) <input type="checkbox"/> Revocation-Misdemeanor (CR) <input type="checkbox"/> Dismissal (CR) <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Appeal (APA) <input type="checkbox"/> Juvenile (JUV) <input checked="" type="checkbox"/> Capital Case (CM) <input type="checkbox"/> No Charges Filed (AR) <input type="checkbox"/> Other:					
		Total Number of Hours/Days	Authorized Rates	Not to Exceed	
Guilty Plea or Plea of True	In court		\$250 to \$450		Sub-total
	Out of court		Flat fee		
Dismissal on State's Motion	In court		\$100 to \$400		Sub-total
	Out of court		Flat fee		
Nonjury Trial and Contested Hearings	In court		\$60 to \$80/hr		Sub-total
	Out of court		\$30 to \$60/hr		
Jury Trial	In court 2nd chair	39.5	\$150 / hr.*		Sub-total
	Out of court 2nd chair	18.8	\$150 / hr.*		
Direct Appeal or Discretionary Review	Death sentence case		\$50 to \$75/hr	\$10,000	Sub-total
	Non-death capital, first or second degree case		\$50 to \$75/hr	\$3,000	
	Third degree or state jail case		\$50 to \$75/hr	\$2,500	
	Misdemeanor case		\$50 to \$75/hr	\$1,500	
Reimbursable costs (Please itemize on Page 2)					FAID-JG
* 5th Adm. Jud. Dist. of TX: Standards & Rules For Qualifications of Attys For Appointment In Death Penalty Cases				Total	
Attorney Name: Grant Jones		Vendor No.: V-02530			
E-Mail Address: grant800@att.net		Dept - Key Code: 3320-5344			Secondary Reference: CM
Mailing Address (Number, Street, Suite, City, State, Zip Code): 5826 Beauvais Dr., Corpus Christi, Texas 78414		For County Auditor Use			
State Bar Number: 10917000		Telephone Number: 361-815-2470		For Number: 1-866-243-9810	
I, the undersigned attorney, certify that the above information is true and correct and in accordance with the laws of the State of Texas. The compensation and expenses claimed were reasonable and necessary to provide effective assistance of counsel. I further swear or affirm that I have not received nor will receive any money or anything else of value for representing the accused, except as otherwise disclosed to the Court in writing.					
Time Period of Services Rendered: From 11/20/2008 to 12/09/2008 (Complete Page 2)					
Have previous vouchers been submitted for this case? <input type="checkbox"/> YES or <input checked="" type="checkbox"/> NO					
If yes, PO# required above. In this voucher for: <input checked="" type="checkbox"/> Final payment or <input type="checkbox"/> Partial payment?					
SIGNATURE OF TRIAL JUDGE: Patsy Perry		151 Patsy Perry Cindy & Martine			
Reason(s) for Denial or Variation:		Date: 12/22/08		Amount: 8745	
Recorded by: Patsy Perry, District Clerk by Deputy District Clerk (Name)					

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**In Court Services****Exhibit A**

Fee Application Number 2 Of Grant Jones

The State of Texas vs. John Ramirez

04-CR-3453-C

94th District Court

Nueces County, Texas

**DETAILS OF SERVICES PERFORMED -- ATTACHMENT**

Date of Service	Description of Service	Time
<b>In Court Services</b>		
12/01/2008	In Court Appearance for trial on merits -- day 1	7.00
12/02/2008	Court appearance for trial on merits-- day 2	7.00
12/03/2008	In court appearance for trial on merits -- day 3	7.00
12/04/2008	In court appearance for trial -- day 4	7.00
12/05/2008	In court appearance for trial -- day 5	7.00
12/08008	Court appearance for trial -- day 6	4.50
	<b>Subtotal</b>	<b>39.50</b>

**Out Of Court Services****Conference With Defendant**

11/24/2008	Meeting with defendant at jail	1.50
12/07/2008	Meeting with defendant at Nueces County Jail with Ed Garza and Dr. Troy Martinez	1.00

Received Time Sep.19. 10:31AM

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12/09/2008	Post trial visit with defendant at jail	0.80
	Subtotal	3.30

**Conference With Others**

11/20/2008	Meeting with Ed Garza, Dr. Troy Martinez, and investigator Joe Barrera	2.00
11/24/2008	Meeting with defendant's maternal grandmother	1.50
11/24/2008	Meeting at Ed Garza office with Joe Barrera	1.00
12/03/2008	Tel conf with Dr. Troy Martinez	0.20
12/07/2008	Meeting at Ed Garza's office with Dr. Troy Martinez	2.00
12/09/2008	Conf with court manager and ADA Skurka ref transfer of defendant to Huntsville	0.50
12/09/2008	Tel conf with attorney Hector Gonzalez	0.10
	Subtotal	7.30

**Other Services**

11/25/2008	Trial preparation of offense reports from continuous form offense report / organization of discovery materials for use in trial	3.00
11/29/2008	Preparation, of request for jury instruction on accomplice testimony; review of recent cases on law of accomplice testimony; and preparation of trial brief containing general rules relating to accomplice testimony	2.00

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12/06/2008	Preparation of objections to punishment charge / filed in trial	2.00
12/07/2008	Review of case law relating to standard of review of future dangerousness issue and evidentiary factors that reviewing court considers	1.20
	Subtotal	8.20
	Total	18.80
		58.30

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Attorney Fee Voucher		PO#	INSTRUCTIONS	
Nueces County District Courts			Show only one cause number per defendant.	
Court # 94th		(One PO# per case.)	Each claim must be printed or typed. Please do not use black ink.	
Cause No.: 04-CR-3453-C		Offense: Capital Murder / Death Penalty	Itemized statement on services rendered is required. See page 2.	
In the case of: State of Texas vs John Ramirez		AG#	Submit separate claims for investigations, expert witness costs and other expenses.	
Case Level:			Forward completed claim to the court for approval.	
<input type="checkbox"/> Felony (CR) <input type="checkbox"/> Misdemeanor (CR) <input type="checkbox"/> Revocation-Felony (CR) <input type="checkbox"/> Revocation-Misdemeanor (CR) <input type="checkbox"/> Dismissal (CR) <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Appeal (APA) <input type="checkbox"/> Juvenile (JUV) <input checked="" type="checkbox"/> Capital Case (CM) <input type="checkbox"/> No Charges Filed (AR) <input type="checkbox"/> Other:				
Guilty Plea or Plea of True	In court	Total Number of Hours/Days	Authorized Rates	Not to Exceed
	Out of court		\$250 to \$450	
Dismissal on State's Motion	In court		Flat fee	
	Out of court		\$100 to \$400	
Nonjury Trial and Contested Hearings	In court		Flat fee	
	Out of court		\$60 to \$80/hr	
Jury Trial	In court 2nd chair	49.1 hr.	\$150 / hr.*	
	Out of court 2nd chair	39.6 hr.	\$150 / hr.*	
Direct Appeal or Discretionary Review	Death sentence case		\$50 to \$75/hr	\$10,000
	Non-death capital, first or second degree case		\$50 to \$75/hr	\$3,000
	Third degree or state jail case		\$50 to \$75/hr	\$2,500
	Misdemeanor case		\$50 to \$75/hr	\$1,500
Reimbursable costs (Please itemize on Page 2)			Total	
* 5th Adm. Jud. Dist. of Tx. Standards & Rules For Qualifications of Attys For Appointment in Death Penalty Cases			Total	
Attorney Name: Grant Jones		Vendor No.: V-02530		
E-Mail Address: grant800@att.net		Dept - Key Code: 3320-5344		
Mailing Address (Number, Street, Suite, City, State, Zip Code):		Secondary Reference: CM		
5826 Beauvais Dr., Corpus Christi, Texas 78414				
State Bar Number: 10917000		Telephone Number: 361-815-2470		
		Fax Number: 1-866-243-9810		
I, the undersigned attorney, certify that the above information is true and correct and in accordance with the laws of the State of Texas. The compensation and expenses claimed were reasonable and necessary to provide effective assistance of counsel. I further swear or affirm that I have not received nor will receive any money or anything else of value for representing the accused, except as otherwise disclosed to the Court in writing.				
Time Period of Services Rendered: From 04/10/2008 to 11/19/2008 (Complete Page 2)				
Have previous vouchers been submitted for this case? <input type="checkbox"/> YES or <input checked="" type="checkbox"/> NO				
If yes, PO# required above.				
Is this voucher for: <input type="checkbox"/> Final payment or <input checked="" type="checkbox"/> Partial payment?				
SIGNATURE OF TRIAL JUDGE: <i>Bolly</i>				
Capital Murder 12/3/08 13395.00				
Reason(s) for Denial or Variation: Date 09/19/2011 Amount				
Recorded by: Patsy Perez, District Clerk by Deputy District Clerk (Signature)				

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**01 Exhibit A**

Fee Application Of Grant Jones  
 The State of Texas vs. John Ramirez  
 04-CR-3453-C  
 94th District Court  
 Nueces County, Texas

**DETAILS OF SERVICES PERFORMED -- ATTACHMENT**

Date of Service	Description of Service	Time
<b>In Court Services</b>		
11/04/2008	Court appearance for status conference on agreed juror exclusions	0.00
11/10/2008	Court appearance for voir dire -- day 1	8.00
11/12/2008	Court appearance for voir dire -- day 2	8.00
11/13/2008	Court appearance for voir dire -- day 3	4.00
11/14/2008	Court appearance for voir dire -- day 4	7.80
11/17/2008	Court appearance for voir dire -- day 5	9.80
11/18/2008	Court appearance for voir dire -- day 6	7.00
11/19/2008	Court appearance for voir dire -- day 7	4.50
	<b>Subtotal</b>	<b>49.10</b>
<b>Total</b>		<b>49.10</b>

**Out Of Court Services****Conference With Defendant**

06/13/2008	Conf with defendant a jail	1.00
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11/24/2008	Meeting with defendant at jail	1.50
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Subtotal	2.50
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**Conference With Others**

05/14/2008	Meeting with co-counsel to draft pretrial motions and to engage investigators and experts	4.00
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05/16/2008	Conf with Dr. Troy Martinez ref his pending hiring as mental health expert	0.20
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06/13/2008	Tel call to investigator Barrera ref jail conf with defendant	0.10
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<i>PO</i> 06/18/2008	Meeting at Ed Garza office	1.00
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10/17/2008	Tel confs with lead counsel	0.30
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11/07/2008	Meeting with investigator at Ed Garza's office	1.50
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11/20/2008	Meeting with Ed Garza, Dr. Troy Martinez, and investigator Joe Barrera	2.00
------------	--	------

11/24/2008	Meeting with defendant's maternal grandmother	1.50
------------	---	------

11/24/2008	Meeting at Ed Garza office with Joe Barrera	1.00
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Subtotal	10.60
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**Other Services**

04/10/2008	Opening of file	0.80
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04/12/2008	Download clerk docket sheets on co-defendant's Christina Chavez and Angela Rodriguez	0.60
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04/17/2008	Meeting with co-counsel Ed Garza at his office re trial preparation and drafting of motions	3.00
05/16/2008	Copying of discovery	1.50
05/16/2008	Prep of draft for motion for hiring of mental health expert and transmittal to lead counsel	1.20
05/16/2008	Gathering and emailing of articles on mitigation case to lead counsel and Dr. Martinez	0.50
06/09/2008	Legal research on motion for appointment of DNA expert	1.00
06/10/2008	Preparation of motion for discovery of DNA testing records	0.80
06/10/2008	Preparation of motion requesting funds to hire DNA expert	1.20
06/10/2008	Tel conf with Dean Wideman, DNA expert of San Antonio re an appointment	0.30
06/10/2008	Prep of motion relating to lineups and in court identification with supporting brief	3.00
06/13/2008	Drafting of general motion for discovery and transmittal to co-counsel	0.80
06/13/2008	Repeated calls to Jail Information to reserve attorney conference room	0.80
10/18/2008	Review of proposed jury questionnaire	0.60
10/19/2008	Prep of draft of motion to sever counts to be filed by lead counsel	1.00
11/06/2008	Organization of jury questionnaires for beginning of individual voir dire	0.80

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11/08/2008	Organization of discovery materials for use in trial	0.50
11/09/2008	Downloaded news articles from Caller-Times relating to cased	0.50
11/09/2008	Trial preparation / reading and making of notes from statement of Ruby Pena	0.60
11/09/2008	Trial preparation / first reading of statement of April Metting, robbery victim	0.20
11/09/2008	Organization of discovery materials for use in trial	0.80
11/25/2008	Trial preparation of offense reports from continuous form offense report / organization of discovery materials for use in trial	3.00
11/29/2008	Preparation, filing, and service of request for jury instruction on accomplice testimony; review of recent cases on law of accomplice testimony; and preparation of trial brief containing general rules relating to accomplice testimony	2.00

Subtotal 25.50

Grand Total

Total

*MSJ* 38.60 39.6  
*YQV* 87.70 88.70

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MARY LOPEZ BUITRON, CSR, RPR  
Official Court Reporter - 94th District Court



# FORENSIC AND CLINICAL PSYCHOLOGY

4925 EVERHART, SUITE 106  
CORPUS CHRISTI, TX 78411  
TEL: 361-651-8102  
FAX: 361-651-8109

TROY MARTINEZ, Psy.D.  
LICENSE No. 31244

111 SOLIDAR, SUITE 300  
SAN ANTONIO, TX 78209  
TEL: 210-259-7683  
t.martinez@txpsych.com

March 6, 2009

Mr. Michael Gross  
106 South St. Mary's Street, Ste. 260  
San Antonio, TX 78205

RE: Cause No. 04-CR-1453-C  
State v. John Henry Ramirez

Mr. Gross,

Per your request and Authorization For Release of Records, I have attached a copy of my file in the above referenced matter. Do not hesitate to contact my office if you have questions.

Sincerely,

*Troy Martinez*

Troy Martinez, Psy.D.  
Licensed Psychologist

# FORENSIC AND CLINICAL PSYCHOLOGY

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## FINAL BILLING STATEMENT

December 8, 2008

The Honorable Bobby Galvan  
94th District Court  
901 Leppard St.  
Corpus Christi, TX 78401

Re: State of Texas vs. John Henry Ramirez, Cause No. 04-CR-1453-C

Below are my fees for services since my first billing statement concerning the (above) referenced matter referred by defense counsel per ex parte Order. My voucher # is 29212.

SERVICE	TIME	FEES
Consultation with Defense Counsel	4.25 Hours	\$ 637.50
Record Review & Notes	1 Hour	\$ 150.00
Meeting w/ Defendant & attorneys on 12/09/08	1 Hour	\$ 150.00
Collateral Interview	1.75 Hours	\$ 262.50
Report Preparation	11.25 Hours	\$ 1,687.50
<b>Total Fee</b>	<b>19.25 Hours @ \$150/Hour</b>	<b>\$ 2,887.50</b>

Please make payment and mail to:

Dr. Troy Martinez  
4925 Everhart, Suite 106  
Corpus Christi, TX 78411

Respectfully Submitted,

Troy Martinez, Psy.D.  
Licensed Psychologist

CC: Ed Gorm & Court Areas via fax

# FORENSIC AND CLINICAL PSYCHOLOGY

4925 EVERHART, SUITE 106  
CORPUS CHRISTI, TX 78411  
TEL: 361-651-8102  
FAX: 361-651-8109

TROY MARTINEZ, Psy.D.  
LICENSE No. 31244

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SAN ANTONIO, TX 78209  
TEL: 210-259-7683  
t.martinez@txpsych.com

December 8, 2008

The Honorable Bobby Galvan  
94th District Court  
901 Leppard St.  
Corpus Christi, TX 78401

Re: State of Texas vs. John Henry Ramirez, Cause No. 04-CR-1453-C

Judge Galvan,

Enclosed here is a second billing statement since my first and only previous billing statement that has not been paid/received as of this date. In summary form, my fee statements are listed below, with funds authorized via separate Court Order.

- (1) 16.25 hours @ \$150/hr = \$ 2,437.50 (statement dated 11/07/08)
- (2) 19.25 hours @ \$150/hr = \$ 2,887.50 (statement dated 12/08/08)

Please call if you have questions or need additional information.

Sincerely,

Troy Martinez  
Licensed Psychologist

DEFENDANT: John Henry Ramirez  
REF SOURCE:  
REF QUESTIONS:

CAUSE NO:  
CONTACT DATE:  
COURT:

	DATE	HOURS	FEES
Consultation w/ Attorney	11/2/08 - 1.5		
	12/2 - 2.5		
	12/2 - 1		
Other Consultations	12/2/08 (1 hr) - 1.0		
Record Review	11/6/08 - 1.5		
	12/2 - 2.5		
Eval. w/ Defendant			
Collateral Interview	11/6/08 (1 hr) - 1.5		
	11/6/08 (1 hr) - 1.5		
Report Preparation	11/6/08 - 2		
	11/6 - 1.5		
	11/6 - 2.5		
	11/6 - 1.5		
	11/6 - 2.0		
<u>Amount Paid to Date</u>	<u>04-25</u>		
Amount Received:			
Interim Bill #1 -	#2 -	#3 -	
#4 -	#5 -	Final Bill -	
Total Bills Billed For Case - <u>\$2,532.50</u>			

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DEFENDANT'S  
EXHIBIT



FORENSIC CASE INFORMATION OVERVIEW  
Dr. Troy Martinec

Date of Contact: Aug 14 Source: Good News  
County / Federal Court: 19th JDC, Houston  
Judge: Gulick Prosecutor: D. Starks & G. Shinn  
Defense Attorney: Ed Gerna Tel: 555-5557  
FAX: 555-7777  
Second Chair: Grant Jones Tel: 515-2170  
FAX: 515-2171  
Investigator: \_\_\_\_\_ Tel: \_\_\_\_\_  
FAX: \_\_\_\_\_  
Ex Parte? ☐ N Court Appointment? ☐ N Private? ☐ N  
Trial Date: \_\_\_\_\_  
DEPENDANT NAME: John Henry Ramirez  
CAUSE NO(S): 04-CR-3453-C  
CHARGE(S): Capital Murder  
SERVICE: CST twenty million Risk: \_\_\_\_\_  
Other: \_\_\_\_\_  
FSS AGREEMENT: Let Gerna sign 5/12/13  
Cap by Court? ☐ N If Yes, amount: 1.1M (attorney's fees & costs)  
OPEN DATE: 5/12/13 CLOSE DATE: \_\_\_\_\_  
STATUS: Pre-Trial Post-Trial  
DISPOSITION (open / trial result including sentence): \_\_\_\_\_

BOBBY GALVAN  
JUDGE

Ann Marie Conant  
Court Coordinator  
888-4330  
ann.conant@tx.uscourts.gov  
Clayton Martinec  
Court Clerk  
888-4330  
Frank L. Boutina  
888-4330

Mary Lopez Bullen  
Official Court Reporter  
888-4330  
Evan Rivers  
Deputy Court Reporter  
888-4330

NINETY-FOURTH DISTRICT COURT  
NUECES COUNTY COURTHOUSE  
CORPUS CHRISTI, TX 78401  
(361) 888-4330  
Telecopier: (361) 888-0730

STATE OF TEXAS

CAUSE NO. 04-CR-3453-C

VS.

JOHN HENRY RAMIREZ

ROCKET CONTROL ORDER FOR CRIMINAL CASE

On the 7<sup>th</sup> day of October, 2004, the Court finds that an indictment has been returned against the Defendant. IT IS ORDERED that this matter is hereby set for:

- (1) September 26, 2008 by 4:00 p.m. Deadline to file Pre-Trial Motions
- (2) October 3, 2008 at 1:30 p.m. Pre-Trial Hearing (includes questionnaire)
- (3) October 23, 2008 at 8:30 a.m. Voir Dire (General Panel)
- (4) Nov. 10 - 28, 2008 at 8:30 a.m. Voir Dire (Individual)
- (5) Jury Trial will follow after jury selection has been completed.

Additional ORDERS:

- 1) A pre-trial hearing has been set by the Court. Please file all Pre-Trial Motions timely and serve upon the opposing party at the time of filing.
- 2) If the Defendant is incarcerated at the Nueces County Jail, you shall deliver all clothing needed for all court hearings at least one (1) week prior to any Court settings.

Signed the 20<sup>th</sup> day of August, 2008:

Judge Presiding

cc: Defendant - John Henry Ramirez, Nueces County Jail  
Defense Attorney - Ed Gerna, Fax: 888-5579  
Defense Attorney - Grant Jones, Fax: 888-243-8810  
Attorney for the State - Mark Starks, Fax: 888-4099  
Attorney for the State - George Schimmel, Fax: 888-4099

To access a case or the Court's calendar: [www.tx.uscourts.gov/facilities/calendar](http://www.tx.uscourts.gov/facilities/calendar)

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No. 04-CR-3453-C

THE STATE OF TEXAS  
VS.  
JOHN HENRY RAMIREZ  
IN THE DISTRICT COURT  
NINETH JUDICIAL DISTRICT  
NUECES COUNTY, TEXAS

CRIMINAL

On this day came to be heard Defendant's ex Parte Request for Advanced Approval of Expenses to Employ Medical Health Report.

The court finds the request is reasonable, and grants the motion.

The Court hereby authorizes defense counsel to hire Dr. Troy Martinec, PhD to conduct the requested investigation.

The Court approves the initial finding for the requested investigation in the amount of \$25,000.00 for investigator time and for reasonable and necessary expenses incident to conducting the investigation.

The Court further orders that the motion and its Order be sealed.

Nueces County is directed to pay for the services of Dr. Martinec. All bills for services and expenses shall be submitted to the Court for approval. Dr. Martinec is authorized to bill monthly for his services as they are rendered. The amount of funds authorized for payment to Dr. Troy Martinec shall not exceed \$25,000.00, with any further approval from the Court.

Signature of this Court: GP 8/14/08

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FORENSIC AND CLINICAL PSYCHOLOGY

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LICENSE NO. 31344

111 SOLEMAN, SUITE 300  
SAN ANTONIO, TX 78208  
TEL: 210-888-7888  
t.martinec@forensic.com

December 4, 2008

Mr. Ed Gerna  
Defense Counsel  
719 S. Shoreline, Ste. 201  
Corpus Christi, TX 78401

Mr. Grant Jones  
Defense Counsel  
606 N. Comanche, St.  
Corpus Christi, TX 78401

Re: State of Texas v. John Henry Ramirez  
Cause No. 04-CR-3453-C

PRESENTENCE PSYCHOLOGICAL EVALUATION

Dear Mr. Gerna & Mr. Jones,

I offer the report below in response to your request for evaluation with your client, Mr. John Henry Ramirez.

Referral Information: Mr. Ramirez is a 24 year-old, Hispanic-American male currently charged with Capital Murder. Per the request of referral, I conducted an evaluation of Mr. Ramirez's development, psychology, and mental state surrounding the time of alleged offense. The purpose of this evaluation was to assist the trier-of-fact in better assessing the following:

1. Mr. Ramirez background;
2. Mr. Ramirez character;
3. Mr. Ramirez personal moral culpability;
4. Mr. Ramirez mental state at the time of alleged offense.

Notification: Prior to this evaluation, Mr. Ramirez was informed of the nature and purpose of this assessment and limits to confidentiality. He was advised that oral and written reports would be provided to his attorneys only, then his attorneys would decide if any report and testimony would be shared with the Court and District Attorney's office.

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**Abstract**

4/10/2014

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## References



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Psychological Evaluation: John Henry Ramirez  
Case No. 04-CR-343-C

Page 10 of 18

disciplinary rules.

A Houston ISD Child Study Dept.-Comprehensive individual Assessment dated 01-09-95 was completed because of "John's inability to sustain attention or focus on the work. He is in constant motion and is disruptive, frustrated with self because of attention deficits." Intellectual assessment (WISC-III) on 11-29-94: VIQ-107, PIQ-106, FSIQ-107. Parent reports John has a lot of anger. In school behavior: continually disrupts classroom, is never attentive, is highly disgruntled, becomes extremely excitable, avoided by others, rejects responsibility, seldom finishes even with guidance and is always rude. Fourth grade teacher described him as "occasionally disruptive verbally and at times he was physically disruptive ... had time sitting at his desk and completing work ... had to do things his way or rules and instructions were hard for him to follow. His behavior around other children was unbecomingly as he did a lot of name calling and gesturing to others." On 01-23-95, described by a different teacher describes him as "taken little self-initiative and/or has little self-discipline. He must be told repeatedly way to follow instructions ... he is a nice boy who wants to please." On 01-20-95, described by a teacher as "personality well-suited with peers ... John's home environment is less than stable." Another teacher describes him as having "developed a close relationship to the teacher, the CSE worker, and the police officer ... John is a sweet child once you get to know him, he has been through a lot." Describing parents/home environment as "parent gets easily aggravated with child. Give him many chores to keep him busy. Kernal child from interacting with other children, could possibly explain why he does not get along so well with others."

John Henry moved out of the district that same year, with 3/95 ARD meeting in 5<sup>th</sup> grade at West Oak ISD. Records indicate he was discharged from speech therapy in 05/95 while in 6<sup>th</sup> grade at age 11. ARD meeting dated 02-29-95 in 6<sup>th</sup> grade indicates the "possible need for medication" due to "hyperactive, inattentive, impulsive, difficulty staying on task, aggressive, rough with other students ... experiencing failure because of inability to focus on tasks." ARD meeting dated 12-06-95 indicates "medication is not available at this time. The parent is unable to pay." It is notable that most ARD meetings were not attended by John Henry's mother or maternal grandmother with whom he lived. ARD meeting dated 01-19-96 indicates a second "medicating condition" was added to the learning disability: ADHD. Mr. Ramirez was now prescribed medication though his mother (not present) could not provide the same. ADHD was identified as "moderate" in severity. ARD meeting dated 03-12-96 indicates he is taking Ritalin. Report notes "improvement seen with medication" but "without medication John is disruptive, talkative, out-of-seat, needs re-focusing." ARD meeting dated 03-05-97 (6<sup>th</sup> grade) indicates Ritalin still prescribed but he is "disruptive, demanding of teacher's attention and off task." ARD meeting dated 03-18-98 indicates "very inattentive, excessive talking to self and peers." Report indicates he "works well with supervision, takes pride in his work." Psychological test data 01-15-98 (age 13, 8<sup>th</sup> grade) indicates a non-verbal IQ of 110 (TON-2) and WRAT-3 reading, spelling, and math scores of 92, 105, 104, respectively. ARD meeting dated 01-15-99 (9<sup>th</sup> grade) indicates John Henry is no longer taking medication for ADHD. ARD meeting dated 11-16-00 (10<sup>th</sup> grade, age 16) says "could be moody. Can be disruptive/argumentative with authority." ARD meeting dated

Psychological Evaluation: John Henry Ramirez  
Case No. 04-CR-343-C

Page 12 of 19

On 12-22-03, John Henry was diagnosed by a military psychologist as having a Personality Disorder NOS with Borderline, Antisocial, and Dependent Traits, with recommendation for "expedient administrative separation." On 12-24-03 he was issued a Summary Court Martial Conviction for unauthorized absence, disrespectful language to a non-commissioned officer, failure to obey a lawful order (undue drinking), and drunk and disorderly. On 02-03-04, he was convicted for failure to follow verbal and written orders by consuming alcohol. On 02-06-04, he was reassigned by a military psychologist and provided the same diagnosis and recommendation. A Screening Report from the director of the Substance Abuse Counseling Center, dated 02-18-04, indicates John Henry "does not meet the criteria for alcohol abuse or dependence at this time ... (he) has no desire for treatment and no desire to remain on active duty."

A Mental Health Evaluation dated 12-22-03 indicates John Henry was referred after making a suicide attempt on 12-19-03. According to report, "he jumped out a window on the second deck due to depressive issues involving his inability to see his fiancée ... (he) jumped out of this window twice ... his fiancée was that the reason he became a deserter for about 4 1/2 months." Report indicates he "appears to have a pervasive need to be with his fiancée to the extent that he becomes dependent and acts out his frustrations." Report indicates significant depressive issues that have "been present throughout much of his life to varying degrees with it being much more acute over the past two weeks." Report notes a history of being raised in a broken family "from the age of two, history of physical and emotional abuse, remedial education for learning disability, prior treatment with Ritalin for ADHD, and a history of school suspensions for fighting and disruptive behavior." He reported a long family history of legal problems due to violence. Report notes a "long history of being violent and acting out his needs. More recently due to the restriction of the USMC his anger has turned inward and he is now acting out some of his frustrations via suicidal thoughts and actions. This type of behavior will only likely continue especially given his history of problems ... from a mental health perspective this patient has a long-standing personality disorder that existed before he entered military service and renders him potentially unmanageable for full duty. The personality disorder is not expected to improve with available military mental health treatment." A second mental health evaluation, dated 02-06-04, indicates John Henry was released from the brig on 01-17-04, released 5 days early "due to having good conduct while in the brig. After his release on or around the 25<sup>th</sup> of January he participated in underage drinking ... He continues to have issues concerning separation that are in accord with his personality disorder."

Observations/Current Mental Status: Mr. Ramirez is a 24 year-old Hispanic-American male who was evaluated in a private room within the Tarrant County Jail on 07-16-08 and 11-04-08. He was dressed in standard jail clothing. Hygiene and grooming were unacceptable given the custodial setting. Motor activity was restricted some by ankle and wrist cuffs, with the exception of completing psychological testing when his hand was released so he could write. He had no problems understanding interview questions or task instructions. Speech was clear, fluent, spontaneous, and structurally organized. He was cooperative and compliant. He appropriately responded to direct questions and

Psychological Evaluation: John Henry Ramirez  
Case No. 04-CR-343-C

Page 11 of 18

01-21-00 indicates failed classes due to excessive absences and incomplete assignments.

A psychology evaluation dated 04-20-01 (10<sup>th</sup> grade, age 16) indicates referral due to disruptive, non-compliant classroom behavior. Report notes "testing was attempted on several occasions but could not be conducted due to John's excessive absences: ... attends Moody High School half-day and works off campus in the afternoon ... frequently skips school altogether." Describes John Henry as "a socially maladjusted individual, who chooses to violate school and community rules for personal gain. He is able to understand the consequences of his own behavior and, by his admission, is also in control of his behavior. He expresses no remorse for his actions and probably states that he has no intention to change ... John belongs to a peer group, possibly gang-like and its activities, which does not appear to value compliance with school and community rules ... may act inappropriately in order to preserve his reputation and esteem in his own eyes and in the eyes of his peer group." Test interpretation on 04-27-01 indicates John Henry "believes the tests are designed to make people feel bad about themselves. He also expressed anger about having been previously labeled LD and ADHD and placed in Special Education ... he articulated his falling grades to his lack of effort, attendance, and content; but defended his ability to do the work ... John does not value or prioritize school. He expressed a general dislike of teachers and school. He does value his job and his peer group. However, he lost his job due to possession of marijuana and belongs to a delinquent peer group. John appears extremely wary of trusting others and states that he will purposefully look out at any person he perceives to be disrespectful of him. He has done this in the past and has no remorse for his actions. Teachers describe him as an oppositional student with an attitude problem and suspect him of gang membership. They state that he has rejected efforts to help him meet his school goal. One of his teachers has established adequate rapport ... John does not attend his other classes at all."

A Functional Behavioral Assessment and Intervention Plan is finally completed on 11-28-09. As usual, a parent did not attend. A recommendation for reevaluation dated 11-06-09 resulted in a 3-day suspension for harassing and threatening another student, this following a prior notice on 10-24-09. Several office referrals are available in records.

In summary form, available military records indicate John Henry was in the U.S Marine Corps active duty from 12-03-02 through 03-09-04. His primary duty was that of a field radio operator. He was convicted for delinquency on 12-22-03, 12-24-03, and 02-03-04. Enlistment data indicates he reported having smoked marijuana 20 times before enlistment, with last use in June 2002. He reported having paid a fine for minor possession of alcohol at age 16. A document dated 02-19-04 indicates administrative discharge under Other Than Honorable conditions "by reason of misconduct due to a pattern of misconduct ... due to a personality disorder." Personal Data Sheet indicates John Henry enlisted on 12-03-02 for 4 years but served active duty for 1 year - 3 months. Awards included the National Defense Service Medal and a Letter of Appreciation. He was declared a "deserter" on 08-01-03, apprehended by the Corpus Christi Police Department on 11-14-03, and turned over to military authorities on 11-18-03.

Psychological Evaluation: John Henry Ramirez  
Case No. 04-CR-343-C

Page 13 of 19

volunteered information on a regular basis. Thought processes were logical, relevant, coherent, and goal-directed. His affect was stable and fairly broad on both interview dates. Mood in July was calm and neutral. In November, he was initially rather animated and appeared agitated but this lessened as the interview progressed. He was attentive throughout and not distracted. He had no problems transitioning from one topic of discussion to another, demonstrating greatly intact short-term memory. Recenter memory was also intact as he could provide meaningful and relevant background information; when this information could be cross-referenced to that provided by collateral sources, information provided by Mr. Ramirez was consistent with that of other sources.

Mr. Ramirez completed the PAI on 07-16-08. Results were invalid due to over-endorsement of signs and symptoms of psychopathology, rendering the remainder of the instrument uninterpretable.

Mental State At Time Of Offense: A witness statement by Mariano Cervantes III, dated 07-30-04, indicates he and his friend, Karthi But, were at a car wash around 11:40 p.m. when observing "a male and a female and they were beating on a man in the parking lot" across the street. The male was punching on the shoulder of the other man who was on the ground. The female was "pulling stuff out of the man's pockets." The female then got into one van and the male into another before leaving. A witness statement by Karthi But, dated 07-20-04 indicates he and his friend were at a car wash around 11:15 p.m. on and saw "two people beating another person" at the Throat Motel. The male and female were hitting the other male. He saw the "girl go through his back pocket and take something. The guy also checked the guy's pockets." The male then jumped into a van and drove off. The female jumped into the passenger side of another van before it left.

Witness statement by Thomas Sifuentes, Jr., indicates he and two friends were brought to a lady's home on the afternoon of 07-19-04. The housewife provided him with Xanax. He and his friends spent the night there until leaving the next afternoon. A guy by the name of "Whitney" (later identified as John Henry), along with two unidentified girls staidy at apartment, gave him and a friend a ride home. A witness statement by Myron Johnson, indicates that on 07-19-04 he was dropped off at his apartment around 5:00 p.m. by John Henry and two other girls in a van.

A voluntary statement by Ruby Garcia, dated 07-31-04, indicates that on Monday night or early Tuesday morning, at about 12:30 a.m., John Henry Ramirez, a friend of hers, knocked on the door of her residence. She opened the door and found he was "all bloody. His right hand was all bloody ...". She went outside with Lawrence Garcia, her sister, and Sandra Garcia. He was stuttering when he spoke. "I asked him where my older son was. He said she was stabbed ... he said they had stabbed someone and then Angela stabbed him and then he stabbed her. He was in such a panic ... he wanted me to let him in the house. I told him I wasn't going to let him in ... he said 'we were running and we split up. I don't know if they made it.' He then 'took off running on foot down York St.'"

According to police reports, on the evening of 07-19-04, Public Safety Officer [redacted] in



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the parking lot of the Times Market Store on Baldwin Street. Witnesses saw a male and female punching and kicking Mr. Castro then both recovered items from his pockets. They then fled in separate vans. Shortly before midnight, the van was located in a heavily thickened brush area near Brewster Street and two females were detained nearby. One subject was identified as Christina Chavez, who complied with police commands. The other, Angela Rodriguez, became uncooperative and challenged officers to shoot her.

Records indicate that, on 07-19-04, at approximately 2330 hours, police responded to a robbery at a Whataburger on Texas Trail. In route, police observed a maroon van traveling on Staples and attempted to cut off the vehicle. This was the van later found off Brewster. The two detained females identified the male subject as John Henry Ramirez, who police then identified from a mug shot as the driver of the maroon van.

Police records identify a list of recovered evidence to include marijuana as well as a large number of unidentified/unspecified pills.

Police reports indicate that, after the homicide was reported, an aggravated robbery was reported at the drive-thru at Whataburger on Staples St. The victim, April Manning, reported to police she was stopped in her vehicle in the drive through line when she noticed a maroon van pull up behind the dumpster nearby and another van pulled up behind that one. She heard a conversation going on between the two vehicles and was then approached by a Hispanic female wearing a white t-shirt that had blood on it. The female asked her if she had a phone because she was hurt. A male then approached and grabbed her by the neck, demanding money. He held a large knife to her throat. Ms. Manning's finger got cut when she put her hands up to push back the male. The male and female then got into one van and the other was left behind. The abandoned van was found registered to Cynthia Lup, which had been reported stolen earlier that day. Ms. Lup also reported a second van stolen and said the same suspect had burglarized her home, identifying John Vazquez and "Myron" as likely responsible parties. While police were responding to this, another aggravated robbery was reported at a Whataburger on Texas Trail. This time, victim Ruby Pena told police she was in the drive-thru lane when she was approached by a Hispanic female and Hispanic male. The female asked to use her phone and the male approached and asked if she had money, then demanded it from her. The male had a serrated knife, which he attempted to place to her neck. They then got into one van and left.

Police reports indicate Ms. Manning positively identified Christina Chavez as the female involved in her robbery.

Police records indicate Christina Chavez, who had been placed alone in an interview, could be heard "laughing hysterically" and appeared to be under the influence of either drugs or alcohol. She smelled strongly of alcohol. Due to her state, she could not be interviewed on the date of arrest. Records indicate that Angela Rodriguez was interviewed by police on 07-20-04 at about 0433 hours. It is reported that she said she and John Henry were supposed to spend the day together "partying." She said John Henry was

claims his last personal memory was picking up Angela and Christina at the house on York St. in early to mid-afternoon. His next personal memory is driving the van with both females inside "and the cops behind us. I think on Staples. I remember seeing lights and I took off." Asked why he fled from police, he said he "always (ran) from cops." He had done this on numerous occasions in the past "and usually got away." He noted that, generally, he wanted to avoid arrest for DWI or anything else. He claims clear memory for events thereafter but, as will be noted below, he actually displays a considerable amount of confusion for certain periods of time.

Mr. Ramirez recalled driving and hiding the van in bushes then running until finding a sewer ditch and tunnel, crawling through the tunnel until exiting near a nightclub. At some point prior to this, while running, he and the female had separated. He reasons this "must have been" around 2:00 a.m. because several people were exiting the nightclub. He approached an unknown female and asked for her help because he was "in trouble", which he said was obvious because police lights were flashing everywhere. She stopped, pushing him down low in her car before taking off. He recalls she dropped him off somewhere on Everhart Road near a guy's house who, the day before, had given him \$20 to "score" marijuana for him, which he never delivered. He recalls feeling very intimidated. Arriving at this guy's house, he returned the \$20 and was allowed to sleep the night on the floor. He washed up the next morning and routinely walking to Civic K for a chocolate milk. He then took a bus to Koverys, planning to go to his mother's house. Realizing a friend lived nearby, he went there instead and found his friend's sister who allowed him inside. The TV news was on "and was all about me. I was tripping, didn't know what happened." The sister drove him to where a second friend worked and lived. There he placed a blocked call to his maternal grandmother, becoming scared and hanging up when she answered crying. He then called his mother, who also answered crying so he hung up. Feeling "confused and not sure what to do", he smoked marijuana with this friend as the first friend and his sister returned. The three of them returned to the friend's residence. There he showered and was provided new clothes. His friend then called a guy in Mexico who was already a U.S. fugitive, arranging for John Henry's arrival in Mexico. They smoked more marijuana and drove later that day to Brownsville, John Henry a passenger in a car driven by "some crack head" following a van occupied by his friend and his sister. They drove across the U.S.-Mexico border where Mr. Ramirez was met by this fugitive and began what would be a 3 1/2 year fugitive status at various locations in Mexico.

**Personality:** For any valid understanding of a person's background, character, and psychology, one must appreciate the unique biopsychosocial influences that contributed to shaping their life. The following are pertinent to Mr. Ramirez's life.

1. Mr. Ramirez was born to young, teenage parents ill-prepared for the responsibility of raising children on their own. Their eldest child/daughter was raised from infancy by her paternal grandmother who retained primary care throughout her life. Their second child, John Henry, was 2 years old by the time his parents split, taken to Houston by his mother to live near her mother who would act as the primary caretaker for the majority of his life. After age 2, John Henry's father was very rarely involved. His

"cooled out." They were supposed to spend the night at her house. John had picked up one of the vans from a lady's house but when they returned to the lady's house the police were there. John panicked and told them that he had warrants. Angela and Christina said they wanted to go home. John Henry picked up a second van at the lady's house while Angela and Christina were in the other van. They had already started drinking. They went to the Times Market and John got out of his van and Angela got on the other. John Henry "went off on the man. He went crazy on him and kept on stabbing him with a knife." Angela says she told John to stop and even pushed him. The man was bleeding everywhere and began choking. It is stated that John Henry later told her he killed the man and he did not care because he was going to jail anyway. Angela said she was scared and asked John, "Now what do we do?" John told her he knew the way to kill somebody. Angela then referenced another robbery committed by John Henry. She said John "just started stabbing" the man at the Times Market and "did not even demand anything from him." She said "he just wanted to kill somebody." Police records note she did not appear to be under the influence of any alcohol or drugs.

Police records indicate that Christina Chavez was interviewed by the police on 07-20-04 at about 1345 hours. She reportedly said "She, Angela and John had been partying earlier in the day. She had been drinking Vodka and taking Xanax ... John was talking to (Pablo Castro) and then John started fighting with the man. Angle was right there with John ... John kept stabbing the man ... John was supposed to get money from the guy ... at the next robbery, the Whataburger on Staples St. ... Angle and John robbed a lady in the drive through ... the next robbery at the Whataburger at 510 Texas Trail ... when asked if John still had the knife when she last saw him ... she said "he wanted to keep it as a souvenir."

Police reports indicate pills found in the pocket of Angela Rodriguez were later identified as Propofol (Diprivan) and Alprazolam (Xanax).

At the time of my interview with Mr. Ramirez concerning events under investigation, he reported that he arrived earlier that evening at Cynthia Lup's house, where she supplied him with Xanax, "roach" (Marijuana) pills, and various other pills unknown to him that he consumed there. This was not unusual, according to Mr. Ramirez; their relationship centered around him (and another friend) providing her with sexual favors in exchange for her providing various pills, allowing him use of her vehicles, and miscellaneous activities like using her computer/internet. On the date in question, she allowed him to use her van when, by his recollection, he left the house by himself traveling to Angela Rodriguez's house on York St. to see her sister Laverne. Here, as he does on several occasions, Mr. Ramirez referenced information he read in police records, saying police records indicate he left the house with other males in the van, which he does not remember. He recalls Laverne already dressed but had plans to go out with other people; Angela and her romantic girlfriend, already there, wanted to go out instead. He said Angela had a bottle of Xanax, which he took some of after already having ingested some throughout most of the day. He claims that, while the three of them were "cracking, everything goes blank." He again referenced information he read in police records that

mother was a substance abuser who was physically and emotionally abusive toward him. His maternal grandmother, the most stable adult influence during these early years, was devoted to her ability or capacity to shield him from his mother's abuse and emotional neglect.

2. Ms. Ramirez's youth involved witness to actual and threatened violence beyond that dispensed toward him by his mother. At age 8 or 9, he witnessed his mother stabbed repeatedly by her then-boyfriend. His maternal uncle, seemingly linked to gang activity when living in Houston, was shot at the residential complex where Mr. Ramirez lived, later required to tend to his uncle's wounds.
3. Mr. Ramirez's important developmental years were also marked by a deep sense of detachment from adult loved ones and emotional neediness unfulfilled. It was clear to him that his mother did not love him; his father had abandoned him by age 2 years. The various boyfriend's to his mother responded to him as though a nuisance. In early teen years, it is notable that Mr. Ramirez engaged protective bonds toward his two younger siblings within his charge. His closest, relatively healthy adult attachment failed to his maternal grandmother who lacked the capacity to support her daughter's lifestyle toward effective parental involvement, responding instead to the abuse in his life by providing religious scriptures that seemed foreign to John Henry (and probably hypocritical given his life). Periodically witness to the life provided his older sister by paternal grandparents, infused with stability and love, Mr. Ramirez grew bitter and emotionally hardened relative to what he perceived others having.
4. Seeds of anger and distrust of others thereby sowed by witnessing adult years, healthy bonding attachments seemingly stifled, his behavior became increasingly aggressive, preoccupied outward by early adolescence. Surrounded by constant struggles and gang activity prevalent in his neighborhood, Mr. Ramirez found these antithetical peer relationships accepting and obtaining alternatives to the unrelentingly cold and twisted nature of parental oversight. Drug use, particularly sedatives, could numb emotional burdens and replace it with a euphoric high.
5. Most relationships with adult figures were either neglectful, abusive, or toxicophane and flooding toward filling Mr. Ramirez's developmental emotional needs. Perilous exceptions might have included a select peer influence, through characteristically unrelenting in nature, and a select few teachers by high school years, which were fleeting within the world of his otherwise daily reminder of his deviant world. With assistance from substance abuse creating emotional development, personally development angled toward instability and dysfunction (even today with prominent Borderline and Antisocial features).
6. With regard to personality development, we know that empirical research shows antisocial behavior originating through a multidimensional, reciprocal interplay between characteristics of the individual youth and the key social systems in which they are embedded (i.e., family, peer, school neighborhood, and community). Taken from this literature, the following factors link with etiology of antisocial behavior: Individual Youth Characteristics - low verbal skills, flexible attitudes toward antisocial behavior, psychiatric symptomatology, cognitive bias to attribute hostile intentions to others; Family Characteristics - lack of monitoring, lax and ineffective discipline, low warmth, high conflict, parental difficulties like drug abuse and

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criminality; *Peer Relations* - association with deviant peers, poor relationship skills, low association with prosocial peers; *School Factors* - low achievement, dropout, low commitment to education, aspects of the school such as work structure and chaotic environment; *Neighborhood and Community Characteristics* - high mobility, low support available from sources like neighbors and church, high disorganization, criminal subculture. One need not look far to understand the origins of that portion of his personality structure since the vast majority see present in Mr. Ramirez's development.

7. Mr. Ramirez's military career reflects a particularly salient period in his life. Sources interviewed capture some of the incessant efforts in Mr. Ramirez's life when he strives toward stability and making gratification through relatively prosocial avenues. It seems clear this formed the basis of his decision to join the Marine Corps, motivated immediately by the intent to provide financially for the mother who rejected and abused as well as satisfying emotionally stimulating interpersonal masculine needs. It seems Mr. Ramirez found reasonable initial success, completing boot camp rather uneventfully and receiving letters with a demonstration of personal pride and accomplishment few if any had seen within him before. Eager perhaps to display this change, he returns to his home in Corpus Christi and meets a 16-year-old female, employed as a stripper, who captures his romantic attention and provides for him a semblance of love and acceptance desperately absent in his life. Returning to duty for training before assigned to his permanent duty station, some of those in his life recognized impending problems with this new relationship, which compromised his own ability to succeed, and discouraged Mr. Ramirez from returning home when next taking furlough. What would start as probably the single most promising source of pride and prestige (service in the Marine Corps) would instead deteriorate into perhaps the most salient source of humiliating, foundationally dented by the pull toward romantic acceptance and fueled by ingrained personality structure to tolerate delayed gratification. Indeed, Mr. Ramirez's psychological decomposition occurs rather sudden once dented by this pull, resulting in an earlier-onset pattern of responding to responsibility. Back home, his newly ingraining, healthy inclusion of Marine identity is abandoned to embrace drug use and affiliation with antisocial environmental influences. Military records clearly document a course of deterioration and return to dysfunctional patterns of dealing with the world around him. At the same time, once discharged and free of what had become burdensome, it seems clear Mr. Ramirez experiences a more intense, perhaps qualitatively different level of anger and self-hatred as a result of failure for having let himself and others down.

With regard to mental state at the time of alleged offense, it should be noted that Mr. Ramirez claims partial amnesia for events around the time period under investigation and complete amnesia specific to contact with Mr. Castro as well as two robberies at Whataburger restaurants. With that said, there is no reliable method to determine the veracity of an individual's claim of amnesia, though his claim is plausible and becomes increasingly likely based on reports of intoxication from the combined effects of Xanax, Rohypnol, and possibly alcohol and marijuana.

Alprazolam/Xanax (a benzodiazepine) use, more common in higher doses, is associated with such psychological effects as euphoria, drowsiness, decreased inhibitions, no fear of danger (i.e., increased risk taking behavior), depressed mood with thoughts of suicide or self-harm or elevated mood and confidence, hallucinations, agitation and hostility, dizziness, feeling light-headed or fainting, headache, speech problems, short-term memory loss (anterograde amnesia), concentration problems, restlessness and clumsiness (impaired coordination and balance), sweating, and rapid heartbeat.

Rohypnol (Rough pills), is a benzodiazepine similar to Xanax, though it has never been approved for medical use in the U.S. Rohypnol is a powerful sedative whose effects can be noticed within 15 to 30 minutes and can last for several hours. Rohypnol affects both physical and mental functioning. Physically, motor functioning is impaired; the user may have difficulty walking or speaking clearly, become drowsy, dizzy, or lose consciousness. Effects on mental functioning include confusion, lowered inhibitions, impaired judgment, discrimination and partial or full amnesia. These effects can combine to make the person seem drunk. When combined with alcohol or other drugs, the effects can be much more serious.

According to available police records, it seems clear Mr. Ramirez's behavior during the time period under investigation was goal-directed and reasonably organized, though it is unclear what impact the presence of the two females had in terms of intensity influencing the execution of behavior spanning the period of time across three distinct acts of criminal activity. That Mr. Ramirez was able to elude police following these incidents suggests a basic level of organized behavior but also prevents examination of his behavior (per observations of others) while under the influence of these substances.

*Troy Martinez*  
Troy Martinez, Psy.D.  
Licensed Psychologist, No. 31244

TCM/wh

## FAX

Date: 12-04-08

To: Mr. Genet Jaram  
Defendant Counsel  
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Mr. Ed Cerna  
Defendant Counsel  
FAX: 988-7779

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4925 Eubank, Ste. 106  
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Telephone: 361-831-8102  
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Total Pages (including cover): 20

Comments: Call with for and/or comment.

## Mitigation Investigation: Defendant Self-Report Survey

Instructions: Answer every question. Put a star by any question you do not understand. Leave no blanks. Use the back of pages if necessary. Your answers honestly is necessary. Write neatly and clearly. Do over your answers at least twice to ensure you answer each question completely. Details are important.

Your Name: John H. Ramirez, Jr. Date Completed: July '08  
Social Security #: 454-11-3620 Insurance No: 0028447

### Birth Information

Date of Birth: 6-29-84 Place of Birth: Corpus Christi, Tx.

Did your mother have any complications with her pregnancy with you? If yes, explain:  
None

Did your mother have any complications with your birth? If yes, explain:  
None

### Family History

Mother:  
Mother's name: Peisilla Martinez Her Current Age: \_\_\_\_\_  
If deceased, how old were you when she died? \_\_\_\_\_ How old was she? \_\_\_\_\_  
When your did she die? \_\_\_\_\_ Cause of death? \_\_\_\_\_

Father:  
Father's name: John H. Ramirez, Jr. His Current Age: 34  
If deceased, how old were you when he died? \_\_\_\_\_ How old was he? \_\_\_\_\_  
When your did he die? \_\_\_\_\_ Cause of death? \_\_\_\_\_

1. Did you natural parents raise you? Yes ☒ No ☐ If no, explain: At around 1 year of age I was taken away from my mother and raised in the institution by CPS because the natural mother found a big herb  
Age you left home? 9 or 10

CONFIDENTIAL  
This information has been obtained in the course of a confidential interview conducted by Federal Law. Federal Regulations (48 CFR Part 1) prohibit you from making any further disclosure of its contents to any person, dissemination, distribution or copy of this information is strictly prohibited and may result in penalty. If you have any questions or need further information, please call the office of Dr. Troy Martinez, Forensic & Clinical Psychology, at 361-831-8102 to report the transmission error. Thank you for your cooperation.

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1. on top of head from when my mother had hit me with the vacuum cleaner. And my mother and father reported when I was 2 so I was never raised by my father.

Household Member	How related	Quality of relationship
2. Guadalupe Alejandro	Grandma	10
Andrew Alejandro	Uncle	5
Andrea Alejandro	Aunt	8
Guadalupe Alejandro	Grandma	10
Andres Alejandro	Uncle	5
Andrea Alejandro	Aunt	8
David Villareal	Uncle	5
Melissa Villareal	Aunt	7
Celestine Villareal	Cousin	7
Chen Villareal	Cousin	7
Priscilla Martinez	Mother	10
Alex Hernandez	Brother	8
Guadalupe Alvarez	Sister	9
Guadalupe Alejandro	Grandma	10
Andrew Alejandro	Uncle	5
Andrea Alejandro	Aunt	8
Priscilla Martinez	Mother	10
Alex Hernandez	Brother	8
Guadalupe Alvarez	Sister	9
Paul Ortiz	Miss Boyfriend	5

3. When we first went from Houston to C.C. we lived with my Aunt Teresa at her home on Alameda. I was given a lot of chores but my cousins and my aunt and uncle would barely do anything. When my mother finally came to C.C. also from Houston she didn't like the way I was made to do everything so she would fight with my Aunt and argue with my grandma. She would also tell me that as soon as she got her own place that I was going to move back with her. Then my grandma got an apartment in LA ARAMARCA on Castilla St. where my grandma and her son and daughter and I stayed. My grandma would make me do a lot of chores, basically all of them while my aunt and uncle would do nothing. My mother would go and see me scrubbing the stairs and dusting the whole living room and she would get angry. My grandma would also send me to the H-E-B that used to be on Ayers and Port to buy grocery's walking. On one occasion a lady stopped me and offered me a ride home because she said she's seen me a bunch of times walking with a lot of bags that I could barely carry. That lady later brought me a bike with a basket attachment. When my mom finally got an apartment in LA ARAMARCA she told me to live with her, so I did. The situation was not good for me and

- 3(Cont.) my mother would when I would mess up or get in trouble. That was the last move that I made.

4. A very short time with the Astros. I didn't last because of transportation problems, in other words I couldn't get to practice all the time.

5. USMC on left forearm. OS on right thigh. Cross with Ying-yang symbol in the middle on left thigh. Scripture from the Bible on left inner calf (John 3:16). Eye on right inner ankle. Pitbull on upper right arm. Homemade tattoo of a face with the words "Never Again" on stomach under Priscilla tattoo.

6. came back about 1 minute or so later. My heart was beating really fast and I couldn't see nothing at all. I was on the porch of a guy I had just met and when it happened I went into a panic and started telling him that I couldn't see and he didn't believe me, as soon as my vision came back I went straight home and stayed there all day.

7. places and not know or remember how I got there. It would serve me but nothing serious or anything to the point where me or anybody else would get hurt would ever happen.

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Dr. Troy C. Martinson

Page 10 of 17

Summarize your attitude and feelings toward each of your children:

*I love my children and they love me. I am a good father and they are good children.*

#### Adult Residential History

List all your residences since leaving your childhood home. If you cannot remember the address, list the location and approximate date.

Address: *Richland, Conn. Fairfield's* Years lived there: *12-15 yrs.*

If you moved around a lot during your adult life, explain why:

#### Religious History

Religious preference, if any: *Jehovah's Witnesses*  
Do you attend church regularly? *No* How often? *Never* Are you attending services while in jail? *No*

Have you ever experienced any unusual religious experiences? *Everytime I'm in trouble I would pray and somehow everything would be helped.*

Are you licensed or ordained as a minister or minister? If yes, explain: *No*

#### Hobbies And Interests

What do you normally like to do for entertainment? *play video games, and listen to music the most.*

List your areas of interest and talent (i.e., art, music, sports): *music, and sports.*

00000000, Date 10/10

Chapel Clerk, Texas 1981

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Dr. Troy C. Martinson

Page 11 of 17

As a child or adult, how you regularly participated in family recreation? Explain:

*As a child I participated in family recreation. As an adult I participated in family recreation.*

Did you participate in any volunteer work, clubs or civic activities? Explain: *Community service.*

#### Clinical Health History

Do you have a currently doctor/physician? If yes, list name and city telephone number also, if known: *No*

List all hospitalizations for physical health problems:

Hospital/Doctor: *Chapel Clerk* Date: *1981* Health Problem/Description: *Chapel Clerk was hospitalized for a heart attack. He was in the hospital for 10 days. He was in the hospital for 10 days. He was in the hospital for 10 days.*

List all surgical operations you have had:

Hospital/Doctor: *Chapel Clerk* Date: *1981* Description: *Chapel Clerk had a heart operation. He was in the hospital for 10 days. He was in the hospital for 10 days.*

List any rare diseases or episodes of high fever you have had: *No*

Are you currently taking medication? Explain in detail: *No*

Do you have any physical disabilities? Explain: *No*

Are you receiving medical treatment while in jail? Explain: *No*

00000000, Date 10/10

Chapel Clerk, Texas 1981

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Dr. Troy C. Martinson

Page 12 of 17

Summarize your current health status: *Physically well, but mentally not so well. I feel like I'm in a bad way.*

5. Do you have any tattoos? If yes, describe each and its location: *Yes, I have a tattoo on my right arm. It says "I love my family".*

#### Mental and Neurological History

List all your hospitalizations for mental disturbances, neurological problems and head injuries:

Hospital/Doctor: *Chapel Clerk* Address: *Chapel Clerk* Years: *1981* Diagnosis: *Chapel Clerk was hospitalized for a mental disturbance. He was in the hospital for 10 days. He was in the hospital for 10 days.*

1.0000000000000000

Are you currently taking a correctional counselor or psychologist? Explain: *No*

Have you ever been unconscious? Explain in detail: *No*

Have you ever been unconscious? Explain in detail: *No*

Have you ever been unconscious? Explain in detail: *No*

Have you ever been unconscious? Explain in detail: *No*

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Have you ever been unconscious? Explain in detail: *No*

Have you ever been unconscious? Explain in detail: *No*

Have you ever been unconscious? Explain in detail: *No*

Dr. Troy C. Martinson

Page 13 of 17

Summarize your perception of your current mental health: *I think I'm in a bad way.*

Are you currently taking a correctional counselor or psychologist? Explain: *No*

Have you ever been unconscious? Explain in detail: *No*

Have you ever been unconscious? Explain in detail: *No*

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Have you ever been unconscious? Explain in detail: *No*

Have you ever been unconscious? Explain in detail: *No*

Have you ever been unconscious? Explain in detail: *No*

Have you ever been unconscious? Explain in detail: *No*

Have you ever been unconscious? Explain in detail: *No*

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Have you ever been unconscious? Explain in detail: *No*

Have you ever been unconscious? Explain in detail: *No*





3/

Livel = GM = 890 ft/lb, ~~not a valid value~~ 11/12 10 to @.

(George says) what - ppl not better than me. Ppl not child not appropriate not they had.  
Ppl for me be gone. Ppl not had not a friend a child of self & they have not 20 persons.

\* primary care-fakes as far back as remember to 2 younger siblings \*  
 but 8 or 9 years away from still go get flowers which then  
 they drugs + intuitive. They never sleep to have

UA (Feb 02) > 1 month  
 Confined to apartment & Louisa not shut together. (antibiotic) 15 min then 2 sec.  
 Saphen chow dogs by V. ~~100%~~ brought to Novits. 50% of dogs there & other Novits + 20 dogs  
 + Wood in the back back removed. More + more disciplinary problem, no longer bawling than 2-3 hours

But manifestly known daily 3-4 months since 3/4 of Dr. Brown Adams' HD merchant?  
That 3/4 of Springfield bank shut & 2-3 guys died. Loaded on Kunt at 1st X. Didst even  
Kunt shot, actually not in UK then saw shot.  
Cocaine @ 1 X nt, on weekends, smart only nt  $\pm$  5-6 lb (22), partying = choppers + the music  
for them. [Place in Mexico + really RT + friends]

✓

Don't to Brittle & let guy + his Dads own the place as, we + some crack head behind  
there. There across Border, & then I see them on my own. Different borders in Mexico part of  
in 1995, just from City 2 yrs, I know well DE & 2 yrs. Some contact & finally, let him go  
(to stay in house) yrs & how close but DE has no idea get home. Unhired. Started up school,  
some time. When at the house but DE still unhired. DE still work

000014



Treatment: Healy ~ could let it bring out a bad day. Gave Healy, Healy saw him right. Could cause danger w/ hand set. Very difficult ~ His mother, he indicated a few of us. & saw a flash towards him. These: at all in his environment, because o let a real interview. "You can't be in front issue."



Tracy Berglund: "very nice" fellow. Think @ a drink. Never contact w/ my  
his family.

Focus: mice, birds, girl birds "small bird club". I want to reproduce

24 Notes: Kelly ne le veut pas, Kelly Marie t-shirt.

Visit again after Becking: he is vibrant. He all very proud + positive. Has much energy  
see the picture on him. Abundance + joyful, confident. Liberal comments, telling "you know  
"no more" to us all. Different kid

Visit again ANCE (w/ his wife later): Jim unknown, & say ANCE. His bx not the Jale  
I saw him: asking not telling what he said; but could have been going on. Directed him  
to leave & he ~~did~~ responded to instructions.

shaded on days, more open than the last in previous years, looking strikingly loud.  
The Mother found like full on the lower from 155 feet.

that bot content ~ '03, Refund 5/04.

Learned @ incident from school counselor @ 2 days after it happened.

Polish: "everyone knows him - after he was good" (said) yes = all, ad except football players  
 But he = problem / gang boss. His body put + people on edge = he.  
 It's obvious that, not a chance. He's a different kind of man.

11/16/25  
151

Guideline Answer (H<sub>2</sub><sup>+</sup> 1/2)

4476 + 2

[illegible]

3yo when first hit CC + no running reaction. Isnt a fixed angle  
No, not caught exactly ~ she goes for head + but fixed + would go head, but if  
she'd have so named back to turn + standing. Mother for 4.5 years.

(Almas) Reminds him might also use to have. He did p. He did it once.  
(After that one) same as 3rd diff. (Almas returns) I see him with the arm up  
"sufficient but it took me to Taha's table, saved some for me.

\* flat & extremely apathetic / uninterested in pursuing info.

asked to give # for @ + for all we, each etc. already know saying

11/10/08  
1.5 hrs

Ernesto Alvarado 0357-1995

10240, ~~10240~~ 541

• Now taking chemotherapy

All JN kids, please bring silver pit cut out card next  
 Sat to Maxine Hand for JN books

Pinet: 15/12  
Feb 52; Ad. Ad.

As they go about it, the school things.

[illegible]

He in March total of 700.

[illegible]

(C/S) says none involved, & small bit.

(R) as placing some flowers, who still need job soon + use SH as help + other.  
 (R) always expect him to do the thing, always have the company + do the thing.  
 21. Tell him to agree her, it is thought. But in fact, maybe he does him, tell the man  
 to say. Tell him how + do something, never feel do it. (R) he, not surprise me  
 he say, decide to him to be the eldest (R) do it. I think do a good man. The  
 book + value + make + his + heart / the + heart / do + not + cost.  
 T. 11.

I talked to [unclear] + [unclear] support him for scriptures,  
(Private Notes) like X I know, most things + [unclear]

She got OK days bc sent on down + you OK did like like. I needed you *gladly*

~~1/3~~

2/3

(at this) go 18 in Haddon, Ill @ 7/60 go. Saw after @ 2:00. Ill keep on  
check, says he "I've dated my mom"... "I've dated my mom." He gave police  
detailed account.

(double shot) yes, not missing we were for CC, they had him up in school, love  
to have in micks, first looked for apt + sent back = Logan as emphatically reminds  
the nurse by going but says who shot heard they gang members, the same  
See 15 yo of X, now 29 so JM 13yo, he not there = only = @ London.

[illegible]

(school) "gender" part but if they can be "a bit to work with" that, put in literature. I'd put type where I said "gender" was close. Every if they want conference = no I have miss acid. They say "little stuff" it will not put acid. I told him story may have flexible (a) I'd have been more than the whole lot. OK? (end)

He always helped around house. "I got a son, a good son" He said - then my son, he was.

1X we would like to do, looking for little boy who's always doing stunts for his gloves. He see him 2-3 x/day. Spd like to see him but Christmas since don't see him doing stunts for you. 1X we did not see him.

She's always possessed naturally the true spirit of the law but we do know where they get up to for it.

Q. And where did he get it? he is capable. I am not the least sure of it. I do not know where he got it.



10/3/69

coll  
252-3052  
Q. (F)

Looks very like a lion.

[illegible]

to ask R  
more  
↓  
n

(these by B) re y. pass... in his mind always left his room to love him.  
(with you think)... (a) hate to say that... I asked you but those him but every K  
to ask to an crying say she of love me. (a) up to tell me offers she left him.

to ride R  
↓  
not to  
beal to  
sampling to  
to direct up

4 [3/1/68] saw him apt. bar, hearing spine surgery just held. He he phony =  
etc. he to long from variety. Left before I sat & by next day for me,  
5 min next day apt. dropping on land, waiting by apt. bldg for him. Heard ch. apt. of  
bldg not appeared. My son Andres Najantes husband + Q. Val. Told him John  
killed a man.

North  
East

Says never heard from JH after trip. Created fear of the computer. Not safe in house 22 not safe. Not heard from Mexico but would be safe for us and him never heard from Mexico. Says not a doctor and him flame & wife his, not married. Not married. Said he married not married but right. Not a couple says why he like himself. 62 and 63

7 DECEMBER 2008  
RE STATE V. JOHN HENRY RAMIREZ  
FILE NOTE/MEMO

Meeting with attorneys Ed Gerns and Grant Jones @ 4pm, then to jail to meet with JHR lasting 1.25 hours. As he discussed in prior contacts but just as (at this latitude), JHR indicated he had no attorneys and he was against no mitigation evidence/ testimony (including myself) and offer no witness testimony (citing family in particular) during prosecution of this trial. As I had done in the past, this day both attorneys and I met with JHR a number of times during the night and feelings leading to this decision. Primary among those in his desire to avoid a lengthy trial was his feelings about the way his life and his wish to avoid a lengthy (life) prison term. He returned no interest in spending the remainder of his life incarcerated and in having to miss to the prison culture. He instead asked that his attorney read a passage from the Bible that encaps their own. He noted that he devoted years (while on the run) thinking about this, concluding that one day he would be arrested by police.

Throughout this meeting, as he has in prior conversations, JTR was calm, judicious in his attitude, and revealed goal-directed, rational, and organized reflections on statements and questions. He displayed a strong, consistent resolve in instructing his story of these events. His preparedness and organization made clear that he had devoted considerable prior thinking to this in the event that he was found guilty of CM. No evidence of psychosis or clinically significant mood disturbances.

**THIR** understands the **potential consequences** of instructing jurors not to advance religious testimony (and only reading Bible passages). Indeed, his hope is that jury will sentence him to death. He explained that he was not even testifying himself during prosecution so that he might ask the jury for death sentence, but, just thinking, the jury might either intentionally give him the opposite of what he wants (another form of punishment) or perceive that his claims to manipulate them. In the end, just his thinking, the most reliable way to increase his chances of getting death jury is simply asking no evidence for a life sentence.

Says in "L & L" that he never returned ~ 1900.  
Came to get my li. Looked > fit, found, felt ~ confident but of otherwise negative. @ defense.  
Kind of himself.

DK is JH day use.  
DK is sexually overactive br.  
Visit me alone, p. 5 friends.

(Chloro V. h. minor) he took her to visit. ca. Sept 1X. He found in bushes, from  
nightlight etc. to grow up. He has age. She largest juvenile, bright red  
darker red on top, no legs, short shorts.

(she) lost 0 ft. She visited him in hospital. He said today he <sup>not</sup> hurt.

Very little relevant info except  
his absence as a fighter

000017



Scanned Jun 18, 2013

## John Henry Ramirez

## School Records:

Attended Moody High School from 9<sup>th</sup> grade through 12<sup>th</sup>. First in 9<sup>th</sup> grade from 08/78 to 05/99 then repeated from 08/99 to 05/00. 10<sup>th</sup> grade interrupted for unclear reasons. Retired from 08/00 to 12/00 then 12/00 to 05/01. He was apparently then promoted to 12<sup>th</sup> grade from 08/01 to 05/02. Data of graduation on 05-24-02, ranked 312<sup>nd</sup> of 395 students, with GPA of 74.1613. In 9<sup>th</sup> grade passed the U.S. History portion of end-of-course standardized testing; in 9<sup>th</sup> grade passed the Biology portion as well. Noted to be "absent" from exit level testing in 10<sup>th</sup> grade for writing, reading, math. Was exempt from exit level testing in 11<sup>th</sup> grade.

Admission, Review, and Dismissal (ARD)/Individual Education Plan (IEP) Committee Report from the Houston ISD: meeting dated 02-17-04 when Mr. Ramirez was 10-6 years old and in 5<sup>th</sup> grade. He met criteria for disability based on learning disability and speech impairment. Listed as "except in all areas" for TAAAS for the following year. Special Ed placement included regular education with modifications, resources classes, and speech therapy. His mother and maternal grandmother were present for the meeting. LD was noted to include written language and listening comprehension. Listed as having average intelligence. His regular classroom teacher "stated John tries hard in class but has great difficulty controlling himself ... he displays inappropriate behaviors such as disruptive, disorganized, seldom finishes his work, rude behavior, and out of control ... due to his easily frustrated, it was recommended he be exempt from all areas of TAAAS testing. It was recommended by the committee that a psychiatric evaluation be reviewed. Mother agreed with the committee. Report indicates he "interacts appropriately with adults" but does not have the ability to follow disciplinary rules.

Houston ISD: Child Study Dept.-Comprehensive Individual Assessment dated 01-09-95. Referred because of "John's inability to sustain attention or focus on the work. He is in constant motion and is disruptive, frustrated with self because of attention deficits." Intellectual assessment (WISC-III) on 11-29-94: VN-107, PIQ-106, FSIQ-107. Parent reports John has a lot of anger. In school behavior: continually disrupts classroom, is never attentive, is highly disorganized, becomes extremely out of control, avoids by others, rejects responsibility, seldom finishes even with guidance and is always rude. Has attended Jefferson School since Kindergarten, with records indicating "good attendance." Achievement testing indicates deficits in written language and listening comprehension. Fourth grade teacher describes him as a "constantly disruptive verbally and at times he was physically disruptive ... hard time sitting at his desk and completing work ... had to do things his way so rules and instructions were hard for him to follow. His behavior around other children was undesirable as he did a lot of name calling and gesturing to others." On 01-23-95, described by a different teacher describes him as "takes little self-initiative and/or has little self-discipline. He must be told repeatedly how to follow instructions ... he is a nice boy who wants to please." On 01-20-95, described by a teacher as "generally anti-social with peers ... he is very curious and enjoys learning ... John's home environment is less than stable." Another teacher describes him as having

intention to change ... John belongs to a peer group, possible gang-like and its activities, which does not appear to value compliance with school and community rules ... may act inappropriately in order to preserve his reputation and esteem in his own eyes and in the eyes of his peer group." Test interpretation on 04-27-01 indicates Mr. Ramirez "believes the tests are designed to make people feel bad about themselves. He also expressed anger about having been previously labeled LD and ADHD and placed in Special Education ... he attributed his falling grades in his lack of effort, attendance, and concern; but defended his ability to do the work ... John does not value or prioritize school. He expressed a general dislike of teachers and school. He does value his job and his peer group. However, he lost his job due to possession of marijuana and belongs to a delinquent peer group. John appears extremely wary of trusting others and states that he will purposefully lash out at any person he perceives to be disrespectful of him. He has done this in the past and has no remorse for his actions. Teachers describe him as an oppositional student with an attitude problem and suspect him of gang membership. They state that he has rejected efforts to help him meet his school goal. One of his teachers has established adequate rapport ... John does not attend his other classes at all." Report indicates he does not demonstrate characteristics of emotional disturbance. A Functional Behavioral Assessment and Intervention Plan is finally completed on 11-28-00. As usual, a parent did not attend. Goals included improving school attendance, refraining from verbal and physical aggression, and complying with directives from authority figures. A recommendation for removal/expulsion dated 11-06-00 resulted in a 3 day suspension for harassing and threatening another student, this following a prior notice on 10-24-00. Several office referrals are available in records. An ARD meeting dated 05-23-02 indicates Mr. Ramirez is a full-time VAC student.

According to available military records, Mr. Ramirez was in the U.S. Marine Corps active duty from 12-03-02 through 03-09-04. His primary duty was that of a field radio operator. He was counseled for delinquency on 12-22-03, 12-24-03, and 02-03-04. Evaluation data indicates he acknowledged having smoked marijuana 20 times, with last use in Jan 2002. He reports having paid a fine for minor in possession of alcohol at age 16 (two years before). A military documents dated 03-19-04 indicates administrative discharge under other than honorable conditions "by reason of misconduct due to a pattern of misconduct ... due to a personality disorder." A Personal Data Sheet indicates Mr. Ramirez enlisted on 12-03-02 for 4 years but served active duty for one year - three months. Awards included the National Defense Service Medal and a Letter of Appreciation. He was declared a deserter on 08-01-03, apprehended by the Corpus Christi Police Department on 11-14-03, and turned over to military authorities on 11-18-03. On 12-22-03, he was diagnosed by a military psychologist as having a Personality Disorder NOS with Borderline, Antisocial, and Dependent Traits, with recommendations for "Expeditious Administrative Separation." On 12-24-03 he was found a Summary Court Marshal Conviction for unauthorized absence, disrespectful language to a non-commissioned officer, failure to obey a lawful order (underage drinking), and drunk and disorderly. On 02-03-04, he was counseled for failure to follow verbal and written orders

## INFORMED CONSENT FOR FORENSIC ASSESSMENT

Your attorney has asked that I (Dr. Troy Matthews) perform a psychological evaluation in connection with your legal case. This form was written to give you information about the assessment process and to get your consent as a willing participant. The assessment will contain several parts and take several hours, perhaps across more than one day to complete. This evaluation may or may not help your case. This is an evaluation only and does not involve treatment of any kind.

One part will consist of an interview, when I will ask you questions about yourself and ask that you talk about yourself. There may be areas that you are reluctant to talk about and, if so, please be sure to tell me these questions are asking you uncomfortable or that you have reasons for not providing the information. Although I will attempt to be thorough when interviewing you, I may not ask about some areas or information that you believe is important, if so, please inform me so that we can discuss it.

Some interview questions will ask about matters related to your legal case. You should be aware that information shared with me will not be held confidential and confidential part of Court record. You should also be aware that telling me certain types of specific information may expose or provide me to communicate this information to other people. Examples of such specific information include reports of child or elder abuse, plans of suicide, major threats to life or violently attack a specific person.

You are encouraged to discuss any questions or concerns with your attorney before and after the assessment. You may also stop the evaluation at any time and for any reason, at which time I will inform your attorney of this decision.

Another part of the assessment may include one or more psychological tests. Some of these tests have no right or wrong answers, while other tests do have either right or wrong responses. You will be given detailed instructions at the time tests are given. This part of the evaluation only assesses intellectual abilities, personality, test taking attitude, how you view yourself and others, how you view the world, problem solving abilities, and other such matters considered relevant and important.

It is important that you be as honest as possible when answering interview and test questions. It is equally important that you put forth your best effort on tests. Information that is incomplete or misleading may be far more damaging to you later than if I am able to hear it now and put it in context in my report and/or testimony.

Another part of the overall assessment will include any contacting by phone or in person, individuals or agencies who know you or have something about you that may be relevant to this evaluation and your case. It may also be necessary that I get existing records about you (i.e., medical, mental health, CPS, unemployment), including highly privileged information. By your signature below, you are giving consent for me to obtain information about you from such people or agencies and to review and use the information I obtain when writing a report and/or during Court proceedings.

At the end of the assessment, I may write a report based on my findings from the evaluation. I will share information with you, if applicable, and a copy of the report to your attorney and discuss my findings with them. I will not send you a copy of any report. You and your attorney will decide if my findings and/or report are shared with the prosecuting attorney and Court.

By your signature below, you are giving consent for me to testify about you and this assessment in hearings and trials related to your legal case.

I am a Psychologist licensed by the Texas State Board of Examiners of Psychologists (TSBEP). I will conduct this assessment in a professional manner and will be open to discussing any questions or complaints you may have in this regard. TSBEP recovers questions and complaints regarding the practice of psychology: 223 Goodnight, Suite 3-000, Austin, Texas 78701, (512)306-7700 or 800-821-5200.

000018



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The 42-month search for John Ramirez is finally over. On February 20, 2008, a multi-jurisdictional effort resulted in Ramirez's capture down in the border town of Brownsville, Texas.

OCTOBER 14, 2008

EDWARD J. GARZA/ATTORNEY AT LAW  
719 S. SHORELINE BLVD., STE. 201  
CORPUS CHRISTI, TEXAS 78401

J. E. BAURERA/INVESTIGATOR  
POB 331533  
CORPUS CHRISTI, TEXAS 78403

RE: JOHN HENRY RAMIREZ JR.  
I HAVE MADE REPEATED EFFORTS TO CONTACT DEFENDANT'S BIO-MOTHER THROUGH HER MOTHER, GUADALUPE ALEJANDRO WITH NO CONTACT MADE TO THIS POINT. MRS. ALEJANDRO STATES SHE HAS COME BY THE LOCATION WHERE SHE BELIEVES THAT PRISCILLA MARTINEZ LIVES AND HAS YET TO LOCATE ANYONE. SHE WILL KEEP TRYING. I HAVE KEPT DR. MARTINEZ APPRISED OF THIS. I BELIEVE AT THIS POINT I WILL BEGIN TO ATTEMPT TO CONTACT THE FATHER AND THE OTHER SIBLINGS.

10/20/08. INTERVIEW OF JOHN HENRY RAMIREZ JR. AT MUECES CO. JAIL

AFTER OUR LAST MEETING WITH YOU AND DR. MARTINEZ, I WENT BY COUNTY JAIL AND CONVEYED YOUR THOUGHTS TO JOHN HENRY RAMIREZ REGARDING THE HEARING THAT HAD BEEN HELD. JOHN HENRY FELT THINGS WERE ACCOMPLISHED AND FELT THAT HE WAS WELL REPRESENTED. IN THE COURSE OF MY INTERVIEW WITH HIM I ASKED HIM IF HE RECALLED THE INCIDENTS THAT WERE CONVEYED BY THE TWO VICTIMS OF THE ARMED ROBBERY AT THE WHATABURGER FAST FOOD RESTAURANT'S AND HE RECALLED NOTHING OF THE INCIDENTS. HE THEN QUALIFIED THAT AND COMMITTED THAT IT MUST BE THE TRUTH, WHY WOULD THOSE TWO WOMEN MAKE UP SUCH STORIES AND THEN GET IN FRONT OF A JUDGE AND LAWYERS.

JOHN HENRY CONVEYS THAT AT THE TIME OF THE INCIDENTS HE WAS ON A CONSTANT HIGH ON Z-BASE (ZANAX) AND BOOZY WHICH HE ACQUIRED VERY EASILY THROUGH THE TWO LUP FEMALES AND "TWO TONI", MYRON MENDOZA. IN CONJUNCTION WITH THIS HE INTRODUCED ALCOHOLIC BEVERAGES TO SUSTAIN THE EUPHORIA.

JOHN HENRY GOES ON TO CONVEY THAT THIS WAS A WAY OF LIFE FOR HIM. SO FEW THINGS TO LOOK FORWARD TO AND FADING AT EVERYTHING THAT HE TRIED TO ACCOMPLISH. I GUESS THIS WOULD LEAD US TO THE LACK OF COGNIZANCE OF HIS ACTIONS.

RE: LUPA ALEX AND JOHN HENRY RAMIREZ CONVEYS THAT HE HAD KNOWN CYNTHIA AND ANILANE LUP TWO WEEKS BEFORE THE INCIDENTS THAT HE IS CHARGED WITH. HE STATES THAT CYNTHIA WOULD PROVIDE BOOZE AND PRESCRIPTION DRUGS TO MYRON MENDOZA AND HIM IN EXCHANGE FOR SEX.

CA 4

CORPUS CR

10/20/08

J. E. BAURERA

10/20/08

THEY WOULD HANG OUT AND USE HER COMPUTER TO LOOK AT PORN SITES, GET HIGH ON WHAT WAS HANDY AND SEXUALLY SERVICE CYNTHIA LUP. JOHN HENRY STATES THAT THE DAUGHTER, ARLENE WOULD USUALLY NOT BE HOME OR WOULD CONFRONT HIMSELF TO HER ROOM. HE STATES THAT CYNTHIA LUP IS A WHITE FEMALE, ABOUT 40 YEARS OF AGE AND OVERWEIGHT. HE BELIEVES THAT CYNTHIA WAS MARRIED BUT HER HUSBAND WAS GONE FROM THE HOME FOR EXTENDED PERIODS OF TIME.

JOHN HENRY CONVEYS THAT FROM THE AGE OF ABOUT 2 YEARS OLD UNTIL ABOUT 10 YEARS OF AGE HE HAD NO CONTACT WITH HIS FATHER. HE LIVED WITH HIS MOTHER IN THE HOUSTON AREA FOR THE MAJORITY OF THIS PERIOD AND THEN THEY MOVED BACK TO CC. HE GOES ON TO RELATE THAT HIS FATHER HAD LITTLE CONTACT WITH HIM EVEN WHEN THE OPPORTUNITY PRESENTED ITSELF. AT ONE POINT JOHN HENRY RELATES THAT HE WAS RUNNING AWAY FROM HOME A LOT BECAUSE OF A PRECARIOUS LIFESTYLE AROUND HIS MOTHER AND HER ASSOCIATES. HE RECALLS GOING TO HIS FATHER'S APARTMENT TO SEEK REFUGE AND HIS FATHER CALLING HIS MOTHER TO COME GET HIM.

JOHN HENRY HAS AN OLDER SISTER, AND TWO YOUNGER BROTHERS, ASHLEY, ALEX AND GUADALUPE ALVAREZ RESPECTIVELY.

JOHN HENRY RECALLS THAT HIS MOTHER WOULD DISCIPLINE HIM AND HIS SIBLINGS BY HITTING THEM WITH WHATEVER WAS HANDY, CLOTHES HANGERS, EXTENSION CORDS, BROOM STICKS ETC. AT TIMES HE WOULD INTERFERE WITH HER ATTACKS ON HIS YOUNGER BROTHERS AND EARN ADDITIONAL PUNISHMENT. AT THIS POINT HE RECALLS RECALLED VERY MUCH TO THE ABUSE. HE WOULD SCREEN HIS MOTHER FROM HIS SIBLINGS WHEN SHE BECAME ENRAGED AND TAKE THE ABUSE TO PRESERVE HIS YOUNGER SIBLINGS. JOHN HENRY IS NOT SURE WHY HE WOULD DO THIS, NO BEING A HERO, JUST BELIEVED IT WAS THE RIGHT THING TO DO. HE CAN RECALL THAT HIS MOTHER WAS A VERY CRITICAL PERSON TOWARDS HIS ACTIONS AND HIS PERSON. HE RECALLS UPS BECOMING INVOLVED IN THEIR LIVES WHEN IN THE COURSE OF BEING EXAMINED FOR LICE AT SCHOOL THAT FOUND HE HAD A RATHER LARGE LACERATION ON HIS SCALP, UNDER THE HAIR, WHICH HAD OCCURRED IN THE COURSE OF HIS BEING BEATEN BY HIS MOTHER. HE BELIEVES THAT ABOUT FROM THE 3<sup>RD</sup> GRADE UNTIL ABOUT THE 6<sup>TH</sup> GRADE HE LIVED WITH HIS MATERNAL GRANDMOTHER. HIS MOTHER AND HIS FATHER HAD LITTLE INVOLVEMENT WITH HIS ONGOINGS AT SCHOOL OR AFTER SCHOOL. HE CAN RECALL ONLY ONCE THAT HIS GRANDMOTHER CAME TO HIS SCHOOL, BECAUSE OF A SKIPPING COMPLAINT.

JOHN HENRY HAS A VERY VIVID RECOLLECTION OF ONE PURSUIT IN SCHOOL, OF FIGHTING OTHER BOYS AROUND HIS AGE GROUP. WHAT IS STRIKING IS THAT THE DESIRE TO FIGHT IS GENERATED AROUND THE CONCEPT OF JOHN HENRY'S SUNSHINE HUNTS AND WOUNDS. AS HE STATES, "THEY WOULD DO STUPID THINGS" AROUND HIM OR AROUND OTHERS. THIS WOULD BEGIN TO BRIDGE JOHN HENRY WHO WOULD LOOK FOR THE OPPORTUNITY TO ENGAGE THEM IN A FIGHT. STRANGELY ENOUGH, JOHN HENRY WHEN ASKED AT WHAT POINT HE

WOULD CARRYING ON THE ENGAGEMENT (8<sup>TH</sup> OR 9<sup>TH</sup> GRADE BOY) STATES THAT HE WOULD BEAT THEM IN THE HOPES OF "FUCKING THEM UP". GIVING UP, OR GIVING IN WERE NOT ACCEPTABLE CONCEPTS. JOHN HENRY WANTED TO BUST THEM UP, BREAK THEM UP, SHOOT THEM OR KILL THEM. JOHN HENRY SEEMS TO CONVEY THAT EVEN AT THIS YOUNG AGE HE EMOTIONAL STATE OF MIND WOULD CONSUME HIM. I CAN ONLY LABEL THIS AS REVENGE OF PERCEIVED INSULTS THAT HE BELIEVED WERE COMMITTED AGAINST HIM. JOHN HENRY IS VERY SENSITIVE TO RIDICULE AND OR MOCKING OF HIS PHYSICAL PERSON AND OR HIS INTELLECTUAL ABILITIES. THIS MAY BE ONE OF THE REASONS FOR THE "SELF-MEDICATION" ON DEPRESSANT TYPES OF DRUGS AND ALCOHOL, TO KEEP HIS ANGER CONTAINED.

JOHN HENRY SEEMS TO HAVE VERY GOOD RECOLLECTION OF VIOLENCE IN THE COURSE OF HIS LIFE. HE RECOUNTS BEING AT THE BEACH WITH HIS AUNT, ADREA ALEJANDRO, HIS MOTHER'S SISTER, AND SHE COMPLAINED TO HIM OF BEING AT ODDS WITH A MALE SUBJECT. JOHN HENRY CONVINCE HER TO TAKE HIM TO HER APARTMENT AND HE BEGAN TO BREAK DOWN THE DOOR. THE MALE SUBJECT SHOT HIM TWICE THROUGH THE DOOR AND HIS AUNT TOOK HIM TO THE HOSPITAL.

THIS CONVERSATION IS VERY UN-EMOTIONAL TO JOHN HENRY. JOHN HENRY MENTIONED THAT CYNTHIA LUP ROUTINELY ALLOWED HIM AND MYRON MENDOZA TO USE THE VEHICLES FROM THAT HOUSEHOLD.

JOHN HENRY DOES NOT HAVE A CLEAR MEMORY ABOUT WHAT OCCURS ON THE DAY OF THE MURDER. HE RECALLS THAT MAJORITY OF THE EVENTS FROM THE DOCUMENTS THAT HAVE BEEN PROVIDED TO HIM. HE DOES RECALL THAT WHILE IN THE LUP VEHICLE HE WAS GOING FOR A GIRL NAMED LAVONIA, BUT SHE IS GOING OUT WITH OTHER PEOPLE AND HE DECIDES TO PARTY WITH ANGELO CRUZ AND CHRISTINA CHAVEZ. HE RECALLS THAT AT THIS POINT HE IS ON A STEADY DIET OF ZANAX AND BEER.

JOHN HENRY RELATES THAT IN THE COURSE OF THE POLICE PURSUIT OF THE VAN HE COMES TO A SENSE OF REALITY. HE RECALLS DRIVING INTO THE NORTH SIDE OF TOWN AND DETOURING THE VAN NEAR AN ENCLOSED, LARGE STORM DRAIN AND RUNNING THROUGH THIS UNTIL HE COMES TO THE END OF IT. HE RECALLS THERE WAS A "BAR" IN FRONT OF HIM AS HE PULLED HIMSELF UP OUT THE PIPE.

JOHN HENRY IS ASKED WHAT HAPPENED IN THE MILITARY AND HE RECOUNTS THAT HE WAS TOLD THAT HE HAD ASSAULTED THE OFFICER IN CHARGE OF THE QUARTERS WHERE HE WAS UNDER OBSERVATION AND FIGHTING WITH HIM OVER A WEAPON. CONSEQUENTLY IN THE COURSE OF THIS HE JUMPS OUT OF THE SECOND STORY OF THE BARRACKS.

ED, I WILL CONTINUE INTERVIEWING JOHN HENRY AND MAKING ARRANGEMENTS TO CONTACT THE OTHER PARTIES THAT MAY PROVIDE INFORMATION ON JOHN HENRY'S HISTORY. AS SOON AS I CONTACT LUP I WILL LET YOU KNOW TO SEE IF SHE WILL COME IN TO BE INTERVIEWED.

THANKS...

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MARY LOPEZ BUITRON, CSR, RPR  
*Official Court Reporter - 94th District Court*

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April 1999

Capital Cases  
By Russell Stetler

Russell Stetler is the Director of Investigation and Mitigation at the Capital Defender Office in New York City. He has investigated death penalty cases since 1980. From 1990 to 1995 he served as chief investigator at the California Appellate Project which coordinated post-conviction litigation on behalf of the hundreds of prisoners under the death penalty in California. He has lectured on capital case investigation for many years at the annual death penalty defense seminar in Monterey.

#### **Mental Disabilities and Mitigation**

Mental disabilities pervade the capital client population. Many lives are spared in sentencing proceedings when jurors come to understand empathetically the disabilities, brain damage, and tormented psyches that help to explain our clients' behavior. Mental conditions which inspire compassion, without justifying or excusing the capital crime, can be powerful mitigation. But these same disabilities and disorders can be lethal when they interfere with the defense team's effort to establish trust. Mentally ill clients can be self-destructive. Their paranoia may prevent their accepting sound legal advice about the wisdom of a plea offer. Their bizarre symptomatology may be misunderstood by the defense team as willful un-cooperativeness - or so feared by jurors that the disability becomes an excuse to kill the client ("surgery to excise the cancer") instead of a basis for reduced moral blame and mercy. This column will address the unique constellation of problems presented by our clients' mental disabilities in death penalty cases - especially in the area of mitigation evidence.

#### **Cynicism About Mental Disabilities**

Capital counsel's ultimate task is to overcome juror cynicism toward mental health issues in criminal cases. But the first task is often to overcome the cynicism within ourselves - the tendency to view mental conditions as convenient "defenses" in our litigation, rather than tragic disabilities which have caused profound suffering in our clients' lives.

Shortly after the death penalty was restored in California, two beloved political leaders - San Francisco's first openly gay supervisor, Harvey Milk, and its liberal mayor, George Moscone - were assassinated by a former member of the board of supervisors, Dan White.

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A homophobic arch-conservative, Dan White opposed everything in politics that Milk and Moscone stood for. His constituency was the working-class Irish Catholic district in which he grew up. Dan White was their all-American boy - star quarterback at a local high school, then a firefighter and a police officer, and finally an elected official in city government. But his life spiraled downward. When he could no longer tolerate city politics, White abruptly quit his position on the board. When he changed his mind and asked to get his job back, the mayor refused to reappoint him - and relished the opportunity to replace him with someone more progressive.

Dan White was well known at city hall, but climbed through a basement window on the day of the assassinations to avoid metal detectors. After killing the mayor, he reloaded his service revolver before walking down the hall to kill Supervisor Milk. When the killing was done, he went straight to confession. After finishing with his priest, he surrendered to one of his closest friends, a homicide inspector who'd played on the same softball team when White was an officer. White continued pouring out the story of what he had done.

His defense team successfully conveyed his mental deterioration to the jury - not just through experts, but with lay testimony that vividly captured his desperate downward spiral (former cop and public official reduced to selling baked potatoes to tourists at Fisherman's Wharf) and bizarre nutritional detour (from athlete with healthful diet to slothful recluse surviving on junk food - particularly Hostess Twinkies). When the jury agreed with the defense contention that Dan White lacked the requisite mental state for murder, the tabloids responded with the "Twinkie Defense" headline - and the legislature forever eliminated diminished capacity from the California penal code.

The popular assumption was that mental-state defenses were cynical concoctions - the inventions of sleazy defense counsel and their hired-gun experts. The forgotten footnote to this San Francisco tragedy is that Dan White served his manslaughter sentence, remained tormented by the demons of depression, and took his own life shortly after his release. The mental illness was real, but two decades later the headlines still portray this case with callous indifference to that reality.<sup>3</sup> This denial of psychiatric disability deeply infects juror attitudes toward expert witnesses around the country.<sup>4</sup> Sadly, many criminal defense practitioners also view their own experts as little more than mercenaries - thus often denying or devaluing authentic client disabilities.

Experts' Range of Roles



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Unfortunately for defense counsel, there is no quick fix to the complex problems associated with the mental disabilities of capital clients. The solution to the problems posed by mental illness in these cases is not simply to "call a doctor." Contacting a mental health expert is a litigation decision with many grave implications, which vary widely in different litigation environments. Most capital defense practitioners can now recite the lessons of *Ake v. Oklahoma*.<sup>5</sup> They feel entitled to competent expert assistance. Most capital defense practitioners now recognize that it is disastrous to wait until the eve of trial to consult a mental health expert,<sup>6</sup> but many over-compensate for this risk by consulting experts too early.

It is essential not only for counsel and the defense team to build a foundation of trust with the client before involving experts in the case, but also to develop an independently corroborated multi-generational social history that will highlight the complexity of the client's life and identify multiple risk factors and mitigation themes.<sup>7</sup>

In the paradoxical universe of mitigation investigation, it is often unclear whether a particular fact will be viewed as aggravating or mitigating - or even which information is reliable and credible. Involving experts before these ambiguities have been resolved can be dangerous, and the choice of expert may inadvertently and prematurely focus the mitigation case too narrowly. Also, mental health experts need the social history information to enable them to conduct a thorough evaluation, if that is their assignment.

Mental health experts are neither all-purpose generalists nor interchangeable. They represent many disciplines (e.g., psychiatry, neurology, psychology, neuropsychology, pharmacology, addiction medicine), and they have specialized knowledge and experience based on their research and clinical practices. Familiarity with cultural norms for the community in which the client grew up may be critical.

One question that needs to be addressed before retaining any mental health expert is what role the expert is going to play. A mental health expert might, for example, join the capital defense team as a consultant whose job it is just to help develop themes to integrate the first and second phases of the trial (e.g., to explain the connection between the client's behavior in the capital crime and his or her mental infirmities). A consultant might also be called upon to decode and deconstruct prior mental health evaluations of the client: to look beneath the labels at the clusters of symptoms which were detected and to suggest alternative hypotheses for explaining those behaviors or traits.

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Another role for a mental health consultant is quasi-therapeutic intervention: to assist the legal team in dealing with the client. The expert might provide insight into team interactions with the client and suggest ways to make the team work better with the client. The mental health consultant might assist the client in enduring the stress of a capital trial, even advising when medication might be indicated. The consultant might play an integral role in helping the client to maintain appropriate decorum in the courtroom or to help counsel explain the cultural and psychological underpinnings of behavior which might be easily misinterpreted by jurors.

Finally, the consultant might help counsel recognize the client's self-destructive behaviors, and help the team to address those risks.<sup>8</sup>

Another role for a mental health expert is as a fact gatherer, an investigator with specialized expertise, someone who can elicit sensitive information which the client (or family members) won't disclose to others on the team. The expert may be a skilled listener or a highly-trained interviewer. The goal may be just to elicit the information, or to evaluate the credibility and reliability of disclosures.

A clinician with expertise in sexual trauma, for example, might be not only skilled in eliciting the client's most shameful secrets, but also in identifying the indicia of reliability when the disclosures come.

Another fact-gathering role involves the use of testing to assess intellectual functioning - or other neuropsychological deficits which affect behavior and potentially diminish culpability. Or the expert might serve as a skilled observer whose job would be to describe psychiatric symptomatology more richly and systematically than the team's lay observers.

In some cases, fact gatherers may become testifying experts - the storytellers who will narrate and interpret the client's life history for the sentencing jury. This narration may or may not include a diagnosis of the client's mental disorders. There may be an attempt to explain why the crime occurred.

Defining the expert's role will help counsel to identify who the expert should be; but the unique needs of the individual case will also dictate what type of expertise is needed and what subspecialty, if any, fits the special needs of the case. If the role involves fact gathering, it is particularly important also to consider how the expert will relate to and connect with the client. How will the expert's age, race, ethnicity, gender, sexual orientation, and personality affect rapport with the

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client? If the role involves testimony, the key question is who will be most credible and persuasive to the fact-finders in the case? Another consideration is how the expert's qualifications will look to a reviewing court. Counsel must also conduct a thorough investigation of the expert's background and prior testimony in anticipation of cross-examination.

#### What Will the Expert Do for Your Client and You?

Mental health experts consulted in capital cases are asked to address a wide range of referral questions. They are not simply called upon to "evaluate" the client. When experts are retained, it is essential to be clear and explicit about the absolute confidentiality of the consultation and the precise referral question or questions to be addressed.<sup>9</sup> The legal issues which might be addressed range from all the questions traditionally implicated in non-capital cases to those unique to capital sentencing. The traditional questions in forensic mental health include competency to stand trial and to aid and assist counsel,<sup>10</sup> responsibility (not guilty by reason of insanity, diminished capacity, extreme emotional disturbance, etc.), mental status at the time of the offense (including capacity to premeditate, deliberate, and form specific intent), capacity to make a knowing and intelligent waiver of rights (including Miranda rights, right to counsel, right to be present, right to trial and appeal, right to testify), and the voluntariness and reliability of all statements to law enforcement. These questions pertain not only to the capital charged offense, but also to all prior offenses, including all convictions by negotiated dispositions involving waivers. This is relatively familiar territory for most lawyers and many experts, and involves clearly articulated legal standards. But developing mitigating evidence is quite different.<sup>11</sup>

#### Why Mitigation Is Different

It is incumbent upon capital counsel to educate experts to be sure that they understand that mitigating evidence relating to mental conditions is defined by what it is not. Mitigation is not a defense to prosecution. It is not an excuse for the crime. It is not a reason the client should "get away with it." Instead, it is evidence of a disability or condition which inspires compassion, but which offers neither justification nor excuse for the capital crime.

Unlike the insanity and competency requirements, mitigation need not involve a mental "disease" or "defect." Mitigation does not require a diagnosis. The expert who assists a capital defense team is not there for either the traditional forensic purpose (assessing competency and/or responsibility) or for the routine goals of a clinician (diagnosis in order to prescribe treatment). If the expert testifies, it may simply be to help jurors appreciate the world as the client experiences it.



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Even where statutory mitigating factors have been codified, there is no simple legal standard to guide mental health experts. In New York, for example, four of the six statutory mitigating factors relate to mental health issues:

"The defendant was mentally retarded at the time of the crime, or the defendant's mental capacity was impaired or his ability to conform his conduct to the requirements of law was impaired but not so impaired in either case as to constitute a defense to prosecution.

"The defendant was under duress or other domination of another person, although not such duress or domination as to constitute a defense to prosecution.

"The defendant was criminally liable for the present offense of murder committed by another, but his participation in the offense was relatively minor although not so minor as to constitute a defense to prosecution.

"The murder was committed while the defendant was mentally or emotionally disturbed or under the influence of alcohol or any drug, although not to such an extent as to constitute a defense to prosecution."<sup>12</sup>

A fifth factor has the catchall language of Lockett and its progeny:

"Any other circumstance concerning the crime, the defendant's state of mind or condition at the time of the crime, or the defendant's character, background or record that would be relevant to mitigation or punishment for the crime."<sup>13</sup>

Mitigation is the biography of mental disability. It is the explanation of what influences converged in the years, days, hours, minutes, and seconds leading up to the capital crime, and how information was processed in a damaged brain. It is a basis for compassion - not an excuse.

#### **Interdisciplinary Teamwork**

Mental health experts study four areas of functioning: cognition (how we understand ideas, intellectual capacity), social functioning (how we understand and respond appropriately to our environment, quality of thought and judgment), emotional functioning (mood control: depression, mania, anger), and behavior (impulsivity, violence, substance abuse, etc.). Their expertise can help a capital defense team

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identify deficits, describe symptoms, and understand the interaction of multiple disabling conditions. Sometimes they can communicate effectively to jurors who the client is and why she behaves as she does.

In the domain of cognitive functioning, experts can vividly convey the impact of mental retardation or learning disabilities on everyday life. For example, an expert can tell the jury about the IQ test and go through specific examples of words or concepts your client did not know, or tasks she could not perform. Jurors can be moved by learning that the client could not define simple words, explain a proverb, or navigate a city's public transportation system on her own.

In the 13 capital jurisdictions where mental retardation is a statutory bar to the death penalty,<sup>14</sup> experts will be critical in establishing the three-prong test of (a) significantly subaverage intellectual functioning, existing concurrently with (b) deficits in adaptive behavior (c) manifested developmentally (prior to age 18).<sup>15</sup>

Adaptive functioning "refers to how effectively individuals cope with common life demands and how well they meet the standards of personal independence expected of someone in their particular age group, sociocultural background, and community setting."<sup>16</sup> It is affected by education and child rearing, motivation, personality characteristics, social and vocational opportunities, and the mental disorders and general medical conditions that may coexist with mental retardation. Some mental disorders are three to four times more prevalent among the mentally retarded than they are in the general population, and every variety of mental disorder can coexist with mental retardation. Diagnosis of either condition, however, may be complicated by the presence of the other. Severe mental retardation may make mental illness harder to detect. Phobias and paranoia may interfere with cognitive testing or mask adaptive deficits. Mood disorders are among the mental disorders commonly associated with mental retardation.

Mental health experts can also explain to jurors the effects of mental diseases and disorders on cognitive functioning or the extent to which psychiatric disabilities are masked by high intellectual functioning. Some psychiatric conditions frequently co-exist with high IQs, and it is important for jurors to appreciate the distinct disabilities which may lie beneath the surface of the client whose intelligence seems apparent.

But before mental health experts are added to a capital defense team, counsel needs to be clear about why the expert is being retained, and the expert needs to be clear about the rules of the litigation (e.g.,

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confidentiality, discovery, etc.), the referral question, the role the expert is to play, and how that role fits into the needs of the team.

Before the expert joins the team, the team should already have assembled a rich documentary history of the client's life through painstaking mitigation investigation. This multi-generational inquiry will have uncovered genetic predispositions; toxic exposure in the physical environment; psychosocial stressors and trauma in the client's family and surrounding community and culture; head injuries; substance abuse; and the myriad other factors that affect our clients. The social history gathered by the defense team will be more accurate and more complete than the client or any family member alone could provide. It must also be impeccably corroborated with contemporaneous records and third-party interviews.<sup>17</sup>

The mental health expert will also benefit from a thorough physical examination of the client, including a neurological examination as one means of detecting brain injury. A standard textbook notes that psychiatrists may have other physicians conduct physical examinations, but they "still should be expected to obtain detailed medical history and to use fully their visual, auditory, and olfactory senses. Loss of skill in palpation, percussion, and auscultation may be justified, but loss of skill in observation cannot be. If the detection of non-verbal psychological cues is a cardinal part of the psychiatrists' function, the detection of indications of somatic illness, subtle as well as striking, should also be part of their function."<sup>18</sup> Every member of the defense team should also be aware of physical signs relevant to mitigation - including needle tracks, scars, tremors, tics, ulcerated nasal passages, facial asymmetry, paralysis, weight fluctuations, etc.

Defense team observations of client behaviors over the life of the case can also assist the mental health expert whose contact with the client is less extensive. Psychologist and mitigation specialist Deana Logan has provided an exhaustive list of noteworthy behaviors,<sup>19</sup> including:

1. Reality confusion (hallucinations: hearing voices, "seeing things," olfactory, tactile, and gustatory false sensations; illusions: such as misperception of harmless image as threatening; phobias: irrational fears, such as fear of leaving one's cell; disorientation: seeming confused about people and surroundings; delusions: consistent false beliefs, such as lawyers out to get him, guard in love with him, food being poisoned)
2. Speech and language problems (incoherence, neologisms, and illogicality: nonsensical speech, including new word formations)



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and non sequiturs; poverty of speech and thought: half answers, monosyllabic or lengthy, but empty; distractibility: changing subjects midsentence; tangentiality: irrelevant answers; derailment: slipping off track from one oblique thought to another; circumstantiality: long-winded and tedious, loss of goal; perseveration: persistent, inappropriate repetition; pressured speech: rapid, racing speech; blocking: mind goes blank mid-thought; paraphasia: substitution of inappropriate words; slurring; monotone; stilted speech; micrographia; hypergraphia; dyslexia)

3. Memory and attention issues (amnesia; confabulation: filling in details of faulty memory; hypermnnesia: extraordinary ability to recall; limited attention span; selective inattention on emotionally charged issues)

4. Medical complaints (hypo-chondria; self-mutilation; accident-proneness; insomnia; hypersomnia; anorexia and changes in eating habits; blurred vision; hearing problems; ringing in ears; headaches; dizziness; nausea; fatigue; loss of control of bodily functions)

5. Inappropriate emotional tone (anxiety; suspicion; depression; hostility; irritability; excitement; flat affect; emotional instability; inappropriate laughter)

6. Personal insight and problem solving difficulties (self-esteem too high or too low; frustration; denial of mental problems; difficulty planning; difficulty changing plans when necessary; impaired ability to learn from mistakes)

7. Problems related to physical ability (agitation; hypervigilance; psychomotor retardation; slow reactions in movements or while answering questions; clumsiness; tension)

8. Unusual social interactions (isolation/estrangement; difficulty perceiving social cues; suggestibility; emotional withdrawal; disinhibition)

#### Testing

Whether a client should be tested by a psychologist or other expert is a complex question, affected by the rules of the litigation (e.g., discoverability<sup>20</sup>), cost and budget, the nature of the referral questions being considered (e.g., assessment of intellectual functioning), the richness of the past documentary record (e.g., whether the client has been tested before, and, if so, when and under what circumstances), the client's own attitude and relationship with the capital defense team, and

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other case-specific considerations. It is beyond the scope of this column to address testing issues in detail, but it is important to note that decisions about testing have profound litigation consequences and should be made with the greatest care.

One category of test assesses cognitive functioning, including intellectual abilities, academic abilities, and neuropsychological integrity. Mental retardation could not be established without some measure of current intellectual functioning - the traditional IQ tests such as the Wechsler Adult Intelligence Scale (WAIS, WAIS-R), the Wechsler Intelligence Scale for Children (WISC, WISC-R, WISC-III), and Stanford Binet Intelligence Scale. These tests include a range of individual subtests whose scores are combined to yield an overall IQ. Learning disabilities are detected by measuring the gap between intellectual ability and academic functioning. Academic tests, such as the Wide Range Achievement Test (WRAT) and Woodcock Johnson Psychoeducational Battery, assess specific skills and knowledge in various areas.

Neuropsychological testing assesses how the brain is functioning, and it is used in a variety of clinical settings to assess a wide range of brain-related conditions, including stroke, head injury, tumors, aneurysms, malformations of the blood vessels in the brain, etc. The same behavioral and mental capacities (such as memory, language functions, orientation) that are evaluated in neurological examinations can be assessed more precisely and objectively through neuropsychological testing. The tests are standardized and yield quantifiable reproducible results, using scores that can be compared to persons of similar age and demographic background as the person being tested. Test batteries may be fixed (one prespecified group of tests used on every subject, e.g., Halstead-Reitan or Luria Nebraska Neuropsychological Battery) or flexible (subtests selected according to individual history, referral question, and performance on core tests). Even most subtests measure multiple domains of functioning, and each domain of cognitive function consists of overlapping subfunctions. Convergence of data from multiple tasks yields the strongest conclusions.

Neuroscience is evolving rapidly and shifting from a narrow "locationist" (e.g., focal lesion) framework to a more subtle understanding of neural systems and networks. But neuropsychologists are able to draw reliable inferences about lateralization and localization of brain damage, as well as the severity of lesions, from patterns of neuropsychological test scores. This information can be of dramatic importance in understanding how a client's violence has been

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influenced by the specific damage his or her brain has suffered. According to current research, "In general, the anterior parts of the brain are more involved in the outflow or 'expressive behavior,' whereas the posterior parts regulate sensory perception, computation, understanding of material, and generally 'receptive' processing. Thus, the back of one's brain 'perceives,' 'evaluates,' and 'thinks,' while the front plans and acts. The laterality effects . . . suggest that left hemisphere regions are superior for language analysis and speech production whereas the right hemisphere serves spatial abilities. Other evidence suggests hemispheric asymmetry for emotional processing, although it is generally believed that subcortical regions play the more prominent role in emotional regulation."<sup>21</sup>

Neuropsychological tests can be administered with relative confidentiality in jail settings because the apparatus is portable. By contrast, the brain-imaging technologies generally cannot be used without court orders to remove clients to the medical centers which offer the testing. These tests are usually ordered and interpreted by a neurologist or neuroradiologist. Interpretation can be controversial (raising the specter of another battle of the experts), and false negatives can be harmful because absence of discernible damage may be falsely construed as establishing the brain's integrity. These tests include:

CT (Computerized Tomography), which uses X-rays passed through the brain from multiple locations to detect density differences and generates three-dimensional images by computer analysis of density information to reveal brain structure only, typically with poor resolution and potential distortion;

MRI (Magnetic Resonance Imagery), which uses magnetism and radio frequency to trigger resonance in subatomic particles of brain substance and generates images of brain structure by computer analysis of resonance data, with good resolution owing to differences in the imaging parameters of various brain tissues, such as white matter, gray matter, cerebrospinal fluid, blood, and diseased tissue;

BEAM (Brain Electrical Activity Mapping), which measures EEG activity and uses a computer to integrate electrical activity to generate topographic mapping of brain electrical activity, typically with poor resolution;

RCBF (Regional Cerebral Blood Flow), which uses isotopic techniques to measure simultaneous blood flow from both hemispheres and multiple brain regions based on active neurons'



Scanned Jun 18, 2013

metabolic need for oxygen and glucose;

PET (Positron Emission Tomography), which measures metabolic activity (glucose utilization) to reveal functional brain activity during particular tasks, with computerized color imaging and moderate three-dimensional resolution; and

SPECT (Single Photon Emission Com-puterized Tomography), which uses photon-emitting radionuclides that, unlike positron emitters, do not require the availability of a dedicated cyclotron.

In addition to litigation issues of confidentiality and cost, researchers suggest three main reasons why neuropsychological testing may be preferable to imaging technologies in detecting brain damage:

"First, neuropsychological assessment is a non-invasive, essentially risk-free procedure that can be used to aid in the determination of whether there is indication for CT or MRI when the index of suspicion is low.

"Second, lesions with substantial impact on behavior may still be undetected even with the highest resolution of MRI available. This holds for many instances of epilepsy, but also for many other patients likely to come to the attention of psychiatrists following head injuries, substance abuse, or exposure to toxins or to rule out dementia. Some of these lesions are too diffuse to be detectible; some do not involve anatomic destruction but are a result of metabolic aberrations that are not seen on CT or MRI. Even small destructive lesions in 'strategic' areas can have devastating behavioral effects. This is particularly the case in subcortical regions where important functions are regulated by small nuclei.

"Third, the MRI or CT may show the region of anatomic destruction but will tell us nothing about the effect of the lesion on behavior. Neuropsychological deficits may be caused by remote metabolic suppression of brain regions functionally linked to the anatomically damaged area, and there is the 'domino' effect in which a behavioral dimension can be impaired because of a lesion affecting an essential component required for its regulation. Conversely, rather sizable lesions in areas that do not play a major role in regulating behavioral functions, or old lesions for which neural plasticity has already enabled the evolution of compensatory processes, may have little behavioral effect. Thus, neuropsychological assessment is essential for the psychiatrist to make the link between brain dysfunction and behavior."22

Scanned Jun 18, 2013

The other broad category of tests used by psychologists assesses personality functioning to help in the evaluation of intrapsychic organization and conflicts.<sup>23</sup> These include objective tests like the Minnesota Multiphasic Personality Inventory (MMPI), Millon Clinical Multiaxial Inventory (MCMI), and the Child Behavior Checklist (CBCL), which rely on self-reporting on carefully specified questions with a limited range of answers. Examples include inventories of statements which the respondents endorse as true or false (such as, "I am afraid of losing my mind", "I am full of energy", or "My sex life is satisfactory") or behavioral descriptions with answers within a range of choices (such as, "withdraws from others": "never", "sometimes", or "frequently"). These tests are often scored and interpreted based on computer programs.

Personality functioning is also assessed with projective tests like the Rorschach, the Thematic Apperception Test (TAT), Incomplete Sentences, and Projective Drawings (House-Tree-Person, Draw a Person). These rely on highly ambiguous stimuli (such as inkblots) to maximize freedom to respond uniquely. Faced with unstructured and plastic stimuli in an undefined and uncertain test situation, the individual is assumed to impose organization and meanings on the stimuli. Methodologies include association, construction, completion, and expressive techniques.

Personality testing, whether objective or projective, may be harmful in two ways and should never be administered without a clear, thoughtful reason for doing so in the context of the particular case and client. To the extent that they yield results which are subject to more than one interpretation, they create the "battle of the expert" which removes empathetic focus from the client. To the extent that they create data that a prosecution expert might interpret to support a harmful diagnostic label - such as any of the so-called personality disorders - they are a needless risk. (It should be noted that some states specifically identify personality disorders as not satisfying statutory criteria for affirmative defenses based on insanity.<sup>24</sup>)

#### Prior Evaluations

Many of our clients, of course, have already suffered from harmful labeling in past evaluations, particularly the cursory, superficial intake evaluations that often occur when people are incarcerated for the first time. Absent a documented and reliable life history, the evaluator probably took the social history entirely from the client's self-report, augmented only by the anti-social behaviors enumerated in the rap sheet or presentence report. Absent reliable medical history or neuropsychological testing, little consideration has been given to

Scanned Jun 18, 2013

developmental or acquired abnormality in brain function. Given the presenting offense and the absence of floridly psychotic symptoms, the drive-by evaluator is predisposed to the usual diagnosis: anti-social personality disorder, a pervasive and unremitting maladaptive pattern of behavior viewed as not particularly responsive to any treatment and significantly interfering with functioning, or causing marked subjective distress. Estimates of an anti-social personality disorder diagnosis in an incarcerated population range from 49 to 80 percent of male prisoners.<sup>25</sup>

It is essential to collect and analyze all prior client evaluations, both to identify major mental illness and related treatment, but also to look behind the misleading and harmful labels which have been applied to the client in the past. Often the evaluator will accurately note symptoms or behaviors, but lack the historical information to understand the context. Drug use, for example, may be accurately documented, but its contextual significance could depend on corrupting influence of caretakers or attempts at self-medication following trauma. Moreover, diagnostic labels will have been applied in their own historical settings, which themselves evolve over time.

The bible of psychiatric diagnosis is the Diagnostic and Statistical Manual of Mental Disorders, first published by the American Psychiatric Association in 1952 and last revised in 1994 as the DSM-IV. Since 1980, the DSM has utilized a multiaxial system of diagnosis, which requires simultaneous consideration of a complex set of factors, including major mental illness (Axis I), longstanding and enduring personality traits and/or maturational delays (Axis II), medical illnesses that may affect psychological functioning (Axis III), environmental and psychosocial stressors that may influence psychological functioning (Axis IV), and the delineation of a longitudinal context (the so-called Global Assessment of Functioning, or GAF) for appraising psychological functioning (Axis V).

Noting that, especially in post-conviction death penalty litigation, our clients and their families have received multiple prior mental health diagnoses, clinical psychologist Kathleen Wayland has pointed out: "In order to understand fully these prior diagnoses, it is important to have an historical awareness of the context in which prior diagnoses were rendered. . . . Thus, a complete, current, and accurate mental health evaluation of a particular client may require a critique of prior evaluations and diagnoses. This may include the ability to identify at what point in time the DSM was consulted, and may also necessitate an understanding of the theories and theoretical assumptions dictating the formulation of prior diagnoses."<sup>26</sup>



Scanned Jun 18, 2013

Elsewhere, Dr. Wayland comments, "It is important to recognize that because changes in the DSM's were guided by an effort to strengthen its empirical bases, with the goal of increasing reliability and validity, evaluations conducted under older versions of the DSM, particularly DSM-I and DSM-II, may carry a greater likelihood of misdiagnosis, inaccurate diagnosis, or failure to identify the existence of particular mental disorders."<sup>27</sup>

#### Prosecutorial Rebuttal

In addition to pre-existing hostile evaluations of capital clients, counsel must be prepared to contend with the likelihood of encountering highly paid rebuttal experts in death penalty cases. The New York Daily News recently noted that state courts limit the rates and total amounts which the defense can pay in death penalty cases, but prosecutors "can pay whatever rates they choose." In New York's first post-Furman death penalty trial, prosecutors paid California-based neuropsychologist Daniel Martell nearly \$50,000 (at \$300 per hour) to interview the defendant and "testify that the defendant didn't suffer an emotional breakdown."<sup>28</sup> In most jurisdictions, evaluations by prosecution mental health experts will be demanded if the defense proffers an expert at any point in the proceeding. Since this area of law varies from one jurisdiction to the next and is still evolving, counsel should assess carefully how to respond to such demands.<sup>29</sup> Even if the rebuttal expert has no direct access to the client, rebuttal testimony can be expected. The background and qualifications of rebuttal experts should be investigated meticulously.<sup>30</sup>

Five years ago, the New Yorker profiled psychiatrist Park Dietz,<sup>31</sup> who was then the prosecution's expert witness in the Long Island trial of an alleged serial killer of prostitutes. Dr. Dietz had already testified in several high-profile cases, including the trials of Jeffrey Dahmer, Arthur Shawcross, and Betty Broderick. Dr. Dietz is a consultant to the Federal Bureau of Investigation's Profiling and Behavioral Assessment Unit and the New York State Police Forensic Sciences Unit. He has no clinical practice, but only a lucrative forensic practice billed in 1994 at \$3000 a day or \$250 per hour.

In the Long Island case, a defense expert had tested the client and found him "off the scale" for paranoid schizophrenia. The defense expert testified that the alleged serial killer had "an extreme inability to think logically or experience time." Dr. Dietz countered that the client's behavior was highly organized, and his memory of what he had done was cogent and precise. According to Dr. Dietz, the alleged killer had acted out asphyxiations inspired by a graphic scene in a Hitchcock

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film; dismembered his victims; stuffed the parts into barrels and milk crates; and disposed of them in rivers, culverts, and wooded areas - often after driving around in his pickup with the corpses straddling him.

Dr. Dietz testified that Jeffrey Dahmer knew right from wrong based on Dahmer's need to consume alcohol before he killed and dismembered his victims. He inferred that Dahmer found those acts aversive; he needed alcohol to overcome his moral inhibitions.

Dr. Dietz calls his discipline "medical criminology." He relies heavily on traditional forensic pathology in homicide cases: for example, proving intent in asphyxiation cases by knowing how much pressure is required to strangle someone, or proving that a shooter aimed carefully by showing that an inaccurate firearm was employed. He prides himself on being interested in physical evidence surrounding the homicide, rather than the client's life history. He refutes impulsive, spontaneous, ungoverned behavior by showing planning and calculation, consciousness of guilt, and self-awareness.

His colleague, psychologist Daniel Martell, has relied heavily on the Hare Psychopathy Checklist<sup>32</sup> to establish that defendants are cold-hearted and remorseless. Martell's testimony stresses the traditional test of responsibility: that a defendant was able to conform his conduct to the requirements of the law and had no significant impairment in his ability to control his behavior at the time of the offense. He will concede mental and emotional problems, but dispute severity - to establish that the defendant has not attained a level of "extreme emotional or mental disturbance."

In a Texas case where Dr. Martell was not permitted to examine the defendant,<sup>33</sup> he based his testimony on 2000 pages of police reports, witness statements, and the reports and test data of other mental health experts. The defense had presented testimony about child abuse, including neglect, physical maltreatment, and sexual abuse. His rebuttal was two-pronged:

1. The defense evidence of abuse was anecdotal, rather than officially documented.
2. Some research suggests that there is little or no correlation between child abuse and adult violent behavior.

The defense had also presented testimony of brain dysfunction. Dr. Martell used imaging reports to minimize anatomical findings,

Scanned Jun 18, 2013

attributed low cognitive functioning in some neuropsychological tests to the effects of situational depression arising from the capital charges and the conditions of confinement, but conceded, nonetheless, some brain damage in the form of occipital or parietal lobe damage. He found "limited" brain damage insufficient to cause the defendant not to be able to control his behavior as he carried out the crime.

Dr. Martell exploited defense expert disagreements about the extent of the client's depression to rule out, in his own diagnosis, severe depression. He then went on for eighteen pages of uninterrupted testimony to offer his "forensic behavior assessment" - that is, the client's behavior during the course of the offense as an indication of mental state. His assessment emphasized various points:

1. Preparation and stalking, showing foresight, not impulsivity;
2. Selection of victim;
3. Getaway planning;
4. Coverup activities.

In a federal death penalty trial in New York,<sup>34</sup> Dr. Martell did not score the Hare Psychopathy Checklist himself, but instead offered its criteria to the jury as a sort of do-it-yourself test of psychopathic evil - listing glibness, grandiosity, proneness to boredom, pathological lying, manipulateness, lack of remorse, shallow affect, lack of empathy, parasitic lifestyle, poor behavioral controls, promiscuity, early behavior problems, lack of realistic long-term plans, impulsivity, irresponsibility, multiple marital relationships, failure to accept responsibility, juvenile delinquency, poor risk for conditional release, and criminal versatility. Capital defense counsel can anticipate jurors hearing these criteria in some form or other whenever rebuttal experts come forward.

Dr. Dietz discussed five categories among mentally disordered offenders at an American Bar Association (ABA) panel in 1997:<sup>35</sup>

1. Crime committed in response to psychotic symptoms;
2. Crime committed to gratify compulsive desires;
3. Crime reflecting a personality disorder;



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4. Crime that is coincidental with a mental disorder; and,
5. True or feigned mental disorder in response to crime.

Dr. Dietz argued that only the first category contains valid insanity, diminished capacity, or mens rea defenses. He went on to suggest that the appropriate professional role for a mental health expert is to function as a forensic scientist, not as an advocate nor as a clinical psychiatrist. According to the report of his presentation, "Whereas the clinical psychiatrist 'wants to help' and is not concerned with evidentiary issues or the truth, the forensic psychiatrist is concerned with truth and should not allow empathy to intrude." [Emphasis added]<sup>36</sup>

#### Explain, But Never Excuse

Mental disabilities are part of the "diverse frailties of humankind"<sup>37</sup> that need to receive individualized consideration in capital sentencing. They may explain, but never excuse, tragic crimes. They may evoke empathy from jurors without needing to reach the legal standards associated with competency and responsibility. If experts testify, their job is to help the jury to understand the human context, to see the impact of disability on the range of choices the capital client could make in everyday life, and to trace the origin of the disabilities to biological, environmental, psychological and social influences which the client never chose. They must draw upon all their understanding of the human brain and human behavior to evoke empathy for the individual who suffers the disability and damage of neurological and/or psychiatric deficits. In doing so, they may also help to impart a larger public-health lesson - one modest case study towards a better understanding of violence and homicide in the twilight of the twentieth century.

#### Notes

1. I have chosen the term "disability" to encompass the broad range of mental conditions which handicap clients emotionally, intellectually, psychologically, and socially and thus render them potentially less culpable. These incapacitating or diminishing conditions include, but are not limited to, mental "disease" and "defect," in the traditional legal nomenclature of sanity and responsibility.
2. As Professor Craig Haney has pointed out, "Human beings react punitively toward persons whom they regard as defective, foreign, deviant, or fundamentally different from themselves. Sobering histories recount the ways in which 'scientific' attempts to prove defect or deviance have served as a prelude to mistreatment and extermination." See, Craig Haney, *Violence and the Capital Jury: Mechanisms of Moral Disengagement and the Impulse to Condemn to*

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Death, *Stanford Law Review*, v. 49 (July 1997), pp. 801-821, at p. 814.

3. See, Elinor J. Brecher, *The Devil (TV, Twinkies) Made Me To It: Why Do So Few People Take the Blame for their Actions?* *The Journal News* (Knight Ridder Newspapers), January 25, 1999, p. 3E.

4. See, Scott E. Sundby, *The Jury as Critic: An Empirical Look at How Capital Juries Perceive Expert and Lay Testimony*, *Virginia Law Review*, v. 83, n. 6, at 1109-1188 (September 1997).

5. 470 U.S. 68 (1985) (denial of expert psychiatric assistance to indigent defendant where defendant's sanity was a significant factor at both guilt and penalty phases of trial constituted a denial of due process).

6. See, e.g., *Bloom v. Calderon* (9th Cir. Dec. 24, 1997) 132 F.3d 1267, 1997 WL 786920 (trial counsel's lack of effort to obtain psychiatric expert until days before capital trial, combined with counsel's failure to prepare expert adequately and then present him as trial witness, was constitutionally deficient performance).

7. See Russell Stetler, *Mitigation Evidence in Death Penalty Cases*, *The Champion*, v. xxiii, n. 1 (January-February 1999), pp. 33-38, at 36.

8. Self-destructive behaviors can include efforts to provoke a death verdict at trial - or to waive appellate review of a death sentence. Eleven of the 63 prisoners executed in 1998 had dropped their appeals, compared to six in 1997. Six prisoners had executions stayed in 1998 because counsel filed for stays over the prisoners' objections. Over the past four years, one in seven executions has involved a prisoner who "volunteered" by waiving appeals. See Richard Willing, *Death Row Inmates Asking More To End Court Appeals, Be Executed*, *Ithaca Journal* (Gannett News Service), February 1, 1999, p. 1A.

9. See Charles M. Sevilla, *Making Sure Your Expert Does Not Become Their Expert*, *California Attorneys for Criminal Justice, Forum*, v. 21, n. 4 (December 1994), pp. 35-39. This article includes a model retention letter.

10. For an expanded consideration of traditional competency questions, see Michael N. Burt and John T. Philipsborn, *Assessing Client Competence: A Review of Approaches*, *California Attorneys for Criminal Justice, Forum*, v. 25, n. 1 (March 1998), pp. 20-29.

11. Capital cases raise other unique mental-disability issues besides those relating to mitigation - most importantly, competency to be executed. See *Ford v. Wainwright*, 477 U.S. 399, 106 S. Ct. 2595, 91 L. Ed. 2d 335 (1986) (Eighth Amendment prohibits the execution of the insane; state procedures which place the ultimate decision wholly within the Executive Branch and deny the condemned the right to submit evidence or challenge or impeach the state-appointed psychiatrists are insufficient; because Ford's procedures in state court were inadequate, he is entitled to a hearing in federal court on his competency to be executed). See also Michael L. Radelet, *Executing the Mentally Ill* (Newbury Park, Ca.: Sage Publications, 1993), for full

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discussion of the issues raised in the case of Alvin Ford.

12. NY Crim Pro §§ 400.27.9(b) - (e).

13. NY Crim Pro §§ 400.27.9(f). *Lockett v. Ohio*, 438 U.S. 586 (1978).

14. In addition to the federal government, 12 states bar execution of the mentally retarded: Arkansas, Colorado, Georgia, Indiana, Kansas, Kentucky, Maryland, Nebraska, New Mexico, New York, Tennessee, and Washington. See George S. Baroff, Ph.D., *Why Mental Retardation Is Mitigating*, *The Champion*, v. xxii, n.7 (August 1998) at 33-35.

15. See NY Crim Pro §§ 400.27.12 (e) and American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, fourth edition (hereinafter, *DSM-IV*) (Washington, DC: American Psychiatric Association, 1994), p. 37.

16. *DSM-IV*, p. 40.

17. See Sean D. O'Brien, *Investigating Psychological Defenses*, in *Missouri Capital Case Resource Materials* (2d ed., February 1995), published by the Missouri Capital Punishment Resource Center and also reprinted in *California Attorneys for Criminal Justice and California Public Defenders Association, California Death Penalty Defense Manual* (Los Angeles and Sacramento, California, 1993 edition; 1996 Supplement, vol. II). O'Brien notes, "It is well recognized that the patient is often an unreliable data source for his own medical and social history. 'The past personal history is somewhat distorted by the patient's memory of events and by knowledge that the patient obtained from family members.' [citation omitted] Accordingly, 'retrospective falsification, in which the patient changes the reporting of past events or is selective in what is able to be remembered, is a constant hazard of which the psychiatrist must be aware.' [citation omitted]"

18. Harold I. Kaplan, M.D., and Benjamin J. Sadock, M.D., *Comprehensive Textbook of Psychiatry*, 4th ed. (Baltimore: Williams and Wilkins, 1985), p. 544.

19. See Deana Dorman Logan, *Learning to Observe Signs of Mental Impairment*, *California Attorneys for Criminal Justice, Forum*, v. 19, n. 5-6 (1992), pp. 40-49.

20. It is also prudent to note that the rules of litigation change over the long life of a capital case, particularly where post-conviction proceedings may be involved. Even in jurisdictions where test results or reports of nontestifying experts may not be discoverable at trial, counsel should consider the likelihood that they will be exposed to different discovery ground rules in both state and federal post-conviction litigation.

21. Ruben C. Gur and Raquel E. Gur, *Methods for the Study of Brain-Behavior Relationships*, in Alan Frazer, Perry B. Molinoff, and Andrew Winokur, eds., *Biological Bases of Brain Function and Disease* (New York: Raven Press Ltd., 1994), ch. 15, pp. 261-279, at p.



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266. In this chapter, see also Table 1, at p. 269, "Deficits in behavioral dimensions and corresponding areas of brain damage associated with these deficits," identifying which different regions are associated with deficits in abstraction and mental flexibility, memory, face recognition, emotional expression, etc.

22. Ruben C. Gur, Andrew J. Sakin, and Raquel E. Gur, Neuropsychological Assessment in Psychiatric Research and Practice, in Robert Michaels, ed., Psychiatry, revised edition - 1991 (Philadelphia: J. P. Lippincott Company, 1991), ch. 72, pp. 1-16, at pp. 5-6.

23. It should be noted that psychiatrists are not trained to administer psychological tests. If there is a thoughtful decision to go forward with testing, it should always be administered by a psychologist with appropriate training and experience.

24. See, for example, California Penal Code §§ 25.5: "In any criminal proceeding in which a plea of not guilty by reason of insanity is entered, this defense shall not be found by the trier of fact solely on the basis of a personality or adjustment disorder. . . ."

25. T. A. Widiger and E. Corbitt, Antisocial Personality Disorder, in W. J. Livesley, ed., The DSM-IV Personality Disorders (New York: Guilford Press, 1995), pp. 103-134.

26. Kathleen Wayland, Ph.D., The DSM: Review of the History of Psychiatric Diagnosis in the U.S., National Legal Aid and Defender Association, Capital Report, n. 40 (November- December 1994), pp. 1-7, at p. 1.

27. Kathleen Wayland, Ph.D., Depression by Any Other Name Might Look the Same: The Reasons for the Development of, and Changes in, Diagnostic Nomenclature, National Legal Aid and Defender Association, Capital Report, n. 42, pp. 2-7, at p. 6.

28. Lawrence Goodman, Death Penalty Bonanza, New York Daily News, August 2, 1998, p. 40.

29. See, e.g., Welsh S. White, Government Psychiatric Examinations and the Death Penalty, Arizona Law Review, n. 37, pp. 869-894.

30. See *Lindh v. Murphy* (7th Cir., 1997) 124 F.3d 899 (defendant's confrontation rights were prejudicially violated at the mental-conviction phase of his murder trial where the trial court prohibited defendant from impeaching the prosecution's psychiatrist with evidence that the psychiatrist had sexually abused some of his patients, was about to lose his medical license and his prestigious faculty positions, and stood a chance of going to prison, since the prosecution portrayed the expert as an eminent psychiatrist with impeccable credentials).

31. Joyce Johnson, Witness for the Prosecution, New Yorker, May 16, 1994, pp. 42-51.

32. R. D. Hare, The Hare Psychopathy Checklist - Revised (Toronto: Multi-Health Systems, 1991). The psychopathy checklist attempts to

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identify a smaller universe of deviants than the broader criteria of antisocial personality disorder, using a structured interview and records review to measure maladaptive personality traits and deviant lifestyle based on twenty items scored 0, 1 or 2 (total score = 0 to 40), with diagnosis of psychopathy requiring score of 30.

33. United States v. Louis Jones (Northern District of Texas, 1995).

34. United States v. Tyrone Walker and Walter Diaz (Northern District of New York, 1996).

35. ABA Panel Discussion Explores Insanity Issues, 61 CrL 1539-43 (Sept. 17, 1997).

36. Id. at p. 1541.

37. Woodson v. North Carolina, 428 U.S. 280 (1976), at 304.

**Editor's Note:** This column is the second in a series that will address specifics of investigating, developing, and presenting mitigation evidence in death penalty cases. The first column appears in the January/February 1999 issue.

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MARY LOPEZ BUITRON, CSR, RPR  
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## Mitigating Circumstances in Death Penalty Decisions: Using Evidence-Based Research to Inform Social Work Practice in Capital Trials

*Julie Schroeder, Cecile C. Guin, Rene Pogue, and Danna Bordelon*

Providing an effective defense for individuals charged with capital crimes requires a diligent, thorough investigation by a mitigation specialist. However, research suggests that mitigation often plays a small role in the decision for life. Jurors often make sentencing decisions prematurely, basing those decisions on their personal reactions to the defendant (for example, fear, anger), their confusion about the rules of law, and their lack of understanding regarding their role and responsibilities. This article proposes an evidence-based conceptual model of the complicating problems surrounding mitigation practice and a focused discussion about how traditional social work mitigation strategies might be evolved to a set of best practices that more effectively ensure jurors' careful consideration of mitigation evidence.

**KEY WORDS:** *capital mitigation; death penalty; forensic social work*

Social workers are increasingly assuming the role of mitigation specialist and becoming central figures in multidisciplinary capital defense teams (Guin, Noble, & Merrill, 2003; Schroeder, 2003; Stetler, 1999). Those who advocate for social workers' entry into this emerging field argue that the profession is rooted in and distinguished by traditions of advocating for the powerless and working for social justice (Roberts & Brownell, 1999). Advanced clinical skills (Alfonso & Baur, 1986; Andrews, 1991; McCoy, 1999) as well as training in systems and ecological theoretical approaches (Schroeder) appear to be very useful in uncovering and interpreting the biopsychosocial realities of individuals charged with capital offenses. In fact, the gold standard for mitigation practice is reliance on focused investigation and presentation of evidence about a defendant's life and character that is sufficient to compel jurors to consider a complexity of personal, social, and ecological issues in deciding attribution of responsibility that mitigate defendants' legal accountability in capital offenses. This article presents a conceptual framework of problems that surround mitigation practice and argues that better practices can be crafted from a

broader systemic approach that is grounded in empirical evidence and practice and goes beyond current parameters of mitigation practice.

### **EMERGENCE OF CONTEMPORARY MITIGATION PRACTICE STANDARDS**

In the incidence of capital cases, the U.S. Supreme Court has recognized what research has long shown: Jurors often make sentencing decisions prematurely, and they often base their decisions on their personal reactions to the defendant, their confusion about the rules of law, and their lack of understanding regarding their own role and responsibilities (Bowers, Sandys, & Steiner, 1998; Sandys, 1995). In an effort to safeguard against jurors' "unguided emotional response[s]" when determining punishment for capital defendants, the Court set forth a legal standard that requires defense teams in capital cases to conduct thorough investigations into the defendants' backgrounds. If the defendant is found guilty, the information gleaned from that investigation must then be presented as mitigating evidence during the penalty phase of the trial (*Furman v. Georgia*, 1972). The Court's monumental decision has led attorneys to seek the aid of social workers

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to conduct extensive social history investigations on clients who are defendants in capital cases. As noted by Schroeder (2003):

The capital mitigation process comes to life when a social worker, using a life history model of investigation, assumes the role of mitigation specialist, who, by capitalizing on social work theory and research, practice knowledge and skills yields vital information that, through objective presentation of fact, guides sentencing decisions. (p. 424)

The life history model relies on traditional practice methods including case history development, multidimensional assessment, record review, mediation, and multidisciplinary teamwork. This extensive case investigation yields rich historical data that are then considered in light of factors empirically linked with criminal behavior. This method provides the legal team with a consistent defense theme that is infused throughout both the evidence and penalty phases of the trial. A mitigation outcome is considered ineffective when the jurors fail to comply with the rules and the roles that are imposed on them as jurors, for example, in making premature decisions.

#### CHALLENGING TRADITIONS

The established mitigation strategy that relies on social histories and life-stories survives and thrives as a legal mandate and preferred approach in capital cases despite of a lack of empirical research that demonstrates it is an effective strategy. In fact, available empirical legal research suggests the contrary: Jurors often disregard or misunderstand mitigating circumstances when making sentencing decisions (Diamond & Levi, 1996; Eisenberg, Garvey, & Wells, 1996, 1998; Garvey, Johnson, & Marcus, 2000; Luginbuhl & Howe, 1995; *McDougall v. Dixon*, 1990). The evidence against the potency of presenting defendants on the witness stand to influence sentencing decisions is compelling and warns attorneys and social worker mitigation specialists that current legal and practice standards are perhaps too unreliable and ineffective to be considered the best possible practice. When practice and empirical evidence from a range of disciplines that hold stake in jurisprudence is considered, problems with currently preferred tactics are more visible, and a more complex set of practice methods and strategies is sug-

gested. Furthermore, the literature suggests certain implications for research and practice, including how mitigation activities are conceptualized and conducted and the effectiveness of the social work mitigation specialist in presenting the information that has been developed.

#### PENALTY-PHASE JUROR DECISION MAKING

Professional literature demonstrates that many disciplines have an interest and a stake in the legal process and outcomes related to capital offenses. The existing body of knowledge, however, is at once complex and disjointed, but provides a conceptual framework of the problems that surround mitigation work and potential best practices to evolve effectiveness. From one perspective, cognitive psychologists seek to understand the role that strong emotions play in creating feelings often tied to pre-existing beliefs, which in turn lead to actions that help to dissipate those strong feelings (Werner, 1986). In addition, attribution theorists examine the manner in which people interpret and explain events (Fincham & Jaspars, 1980), leading to their assignment of responsibility and blame (Coates & Penrod, 1981). This provides a foundation for understanding how and why jurors decide to impose the ultimate punishment. These processes are elaborated by descriptive studies that identify how jurors' strong emotional reactions to capital defendants often result in a death verdict (Eisenberg et al., 1998; Steiner 1999; Sundby, 1998; Tomes, 1997). At times made prematurely, jury decisions appear to be based largely on personal values and emotional responses that rarely relate to the facts of the case and the potential mitigating influences on criminal behavior. Jurors often make decisions on the basis of their personal reactions to the defendant that are developed during the guilt phase of the trial (Garvey, 1998; Garvey, 2000). Furthermore, there appears to be misunderstanding of the statutory obligations that specifically dictate juror roles and responsibilities.

#### Juror Emotion

Jurors have reported a full range of emotional responses, from fear, anger, and disgust to sympathy and positive regard (Eisenberg et al., 1998; Garvey, 2000; Slobogin, 2003; Sundby, 1998; Tomes, 1997). Such a complicated mixture of emotions combined with the often-incomprehensible language of capital punishment statutes often results in a recipe for

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errors in judgment on life and death decisions (Eisenberg et al., 1998; Steiner, 1999). In attempting to understand the interaction of personal values and emotions with decision making, the field of cognitive psychology offers a possible explanation for the complex activities that may take place in the mind of the juror. Taken together, these findings advise social work practitioners who act as mitigation specialists to consider the role personal values and emotional reactions play in jury decision making as well as the effect juror ignorance of process may produce.

The literature demonstrates that other factors complicate jury decision making. For example, Luginbuhl and Howe (1995) found that jurors expressed fear about making a decision in a capital case because they were confused about the statutes regarding sentencing options. Jurors' fear about a defendant's future dangerousness mixed with erroneous beliefs concerning sentencing limits was found to lead to an erroneous belief that capital defendants may serve a sentence of less than 20 years and may be afforded parole opportunities. Similarly, Eisenberg and colleagues (2001) and Sandys (1995) found that fear about parole was cited as an important rationale behind some jurors' vote for death. As a whole, these findings suggest that part of mitigation process and practice should involve clarifying, in practical terms, the actual consequences of sentencing options and other complex legal considerations surrounding death penalty decisions.

#### **Juror Perception**

Defendant behavior while in custody (Sundby, 1998) and demeanor during the trial (Eisenberg et al., 1998; Tones, 1997) have been demonstrated as additional complicating features of the problems that surround death penalty decisions and that often give rise to anger among jurors. In fact, these two factors were shown to receive jurors' greatest consideration during deliberations. Jurors were also often angered when a defendant appeared bored or uninterested in the trial proceedings, and their anger often translated into a belief that the defendant lacked remorse. These perceptions that defendants lack remorse invoked anger, often mixed with disgust, regarding aggravating circumstances and were associated with death verdicts, regardless of the mitigating evidence produced during the penalty phase (Eisenberg et al., 1998). A remorseful defen-

#### *Remorse is a significant issue to consider when communicating mitigating influences to a jury.*

dant, who appears to take responsibility for his or her actions, evokes juror sympathy and support (Tones). Remorse appears to work in the defendant's favor in two ways. First, jurors view defendants' apparent remorse as being the correct moral reaction to the crime. Second, perceived remorse on the part of a defendant is viewed as evidence that the defendant will not be dangerous in the future (Eisenberg et al., 1998). Sundby hypothesized that some jurors determine remorse by the manner in which the case is presented to them, rather than the actual remorse shown by the defendant in the courtroom. Nonetheless, remorse is a significant issue to consider when communicating mitigating influences to a jury. Taken together, evidence from these studies cautions those who act as mitigation specialists to help defense teams find ways to frame evidence and highlight reported and observable behavior in ways that suggest and underscore a defendant's remorse.

#### **Statutory Disregard or Confusion**

Luginbuhl and Howe (1995), Tiersma (1995), Ritter (2004), and Wiener and colleagues (2004) argued that jurors do not understand mitigation because the instructions they receive are presented in legal language that is difficult for laypeople to understand. When jurors cannot rely on the guiding legal principles, they often fall back on prior or folk knowledge as a basis for decision making (Steiner, 1999; Wiener et al.).

Furthermore, capital jurors report frequent confusion over the issues of aggravating and mitigating circumstances and the level of agreement needed for each. Such confusion often results in a death verdict (Eisenberg & Wells, 1993; Wiener et al., 2004). When Garvey (1998) queried jurors about what, according to statute, and in their minds, constituted aggravating factors, respondents reported that especially brutal murders, child victims, future dangerousness, and lack of remorse were the most salient aggravating circumstances. The defendant's prior criminal record and history of alcohol or drug abuse were lesser, yet pertinent, aggravating circumstances.



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The legally required level of agreement about aggravating circumstances has been found to be especially confusing to jurors when weighing them in the punishment phase of a trial. Legal scholars have found that jurors incorrectly believed aggravating factors did not have to be proven beyond a reasonable doubt (Eisenberg & Wells, 1993), and they mistakenly believed anything could be considered aggravating, even evidence not put forth in the state's argument (Luginbuhl & Howe, 1995). Furthermore, many jurors believed that the death penalty was absolutely required when crimes were considered heinous (Eisenberg et al., 1996; Garvey, 2000; Garvey et al., 2000; Sandys, 1995).

Jurors' confusion about aggravating circumstances is also evident in research on the effect of mitigating evidence. Jurors stress the importance of certain mitigating factors considered during deliberations, including residual doubt about the defendant's guilt, mental retardation, and youthfulness of the defendant at the time of the crime, circumstances out of the defendant's control, and circumstances that diminish the defendant's responsibility for the crime (for example, multiple defendants). Factors receiving less consideration, yet still considered to be mitigating, include victims with criminal histories and defendants with histories of mental illness, child abuse, poverty, and time spent in state institutions (Garvey, 1993). Many jurors incorrectly believe mitigating factors must rise to the reasonable doubt burden of proof when in fact mitigating factors need only outweigh the state's presented aggravating circumstances (Luginbuhl & Howe, 1995). Jurors also mistakenly assume mitigating circumstances require the jury's unanimous vote when in fact, only one juror need consider a life circumstance to be mitigating (Garvey, 2000; Luginbuhl & Howe).

In theory, legal process in capital cases is expected to proceed in a stepwise fashion. In practice, jurors appear to "multitask" in ways that undermine the intent of prescribed process and significantly influence juror decision making. For example, the law requires jurors to withhold consideration of punishment during the guilt phase and make this decision after aggravating and mitigating circumstances are presented during the penalty phase of the trial (*Furman v. Georgia*, 1972). Yet, nearly one-half of jurors in one study (Bowers et al., 1998), and 70 percent of jurors in another (Sandys, 1995) indicated they had decided on punishment during the

guilt phase of the trial before aggravating and mitigating circumstances were presented. Of those jurors who decided the punishment during the guilt portion of the trial, more than half of them maintained that decision throughout the trial. Jurors who reported reaching early decisions about punishment did so because of their predisposition about crime, punishment, the death penalty, and experiences during the guilt phase. Surprisingly, on hearing the state's evidence, a significant number of jurors decided that the death penalty was not only acceptable punishment for first-degree murder, but also for other types of murder as well. These findings advise mitigation practices that ensure jurors' thorough understanding of the legal issues that surround individual cases and options of legal response and, as important, trial strategies that remind jurors over and over again of their specific responsibilities associated with each step of the judicial process.

#### **Abdication of Responsibility**

Jurors who do not understand what is legally expected of them in capital trials are more likely to abdicate the responsibility for their decisions to others. When jurors fail to maintain a sense of responsibility for deciding verdicts and sentences, they are also less likely to critically consider the influence of mitigating circumstances on criminal behavior. Jurors tend to abdicate independent responsibility in a number of ways. For example, it is the sole responsibility of each juror to independently vote for life, life without parole, or death. Empirical evidence suggests however, that some capital jurors who vote for the death penalty are likely to rationalize a death vote by abdicating responsibility for that decision to the trial judge, the community, other jurors, the law, and the defendant (Eisenberg et al., 1996; Hoffman, 1995; Sherman, 1995).

Abdicating independent responsibility to the judge occurs more frequently among premature decision makers (Eisenberg et al., 1996), who believe that their verdict is merely a recommendation (Hoffman, 1995; Sherman, 1995). Sherman also argued that when jurors consider the judge as the final decision maker, they feel less responsibility for the verdict. Moreover, jurors who believe that they are merely representatives of the greater community feel less responsible for their decisions about punishment. Yet, they may paradoxically see themselves as only one vote and look to the voting

behavior of their fellow jurors as a means of relinquishing personal responsibility.

There are a number of other risky situations when jurors abdicate their independent responsibility in decision making that should concern practitioners and legal advocates. One risk is that jurors may rely on the legal system to avoid taking personal responsibility for their decision. For example, jurors who falsely believe that the law requires a verdict of death for certain types of murder (Eisenberg et al., 1996; Sherman, 1995) frequently feel that the responsibility for a death sentence belongs to the legal system. In addition, beliefs about how the judicial system's appeal process operates have also been found to influence jurors' level of personal responsibility. The appeals process is touted as a lengthy, time-consuming procedure, and jurors who do not think executions are actually carried out on a regular basis are less likely to accept responsibility for the verdict. Finally, research indicates that two critical factors appear to be associated with the ease with which a juror abdicates responsibility for his or her decision. These are when the juror views the crime as being especially brutal or premeditated (Sherman). Because crimes that lead to capital charges often dehumanize defendants proportion-

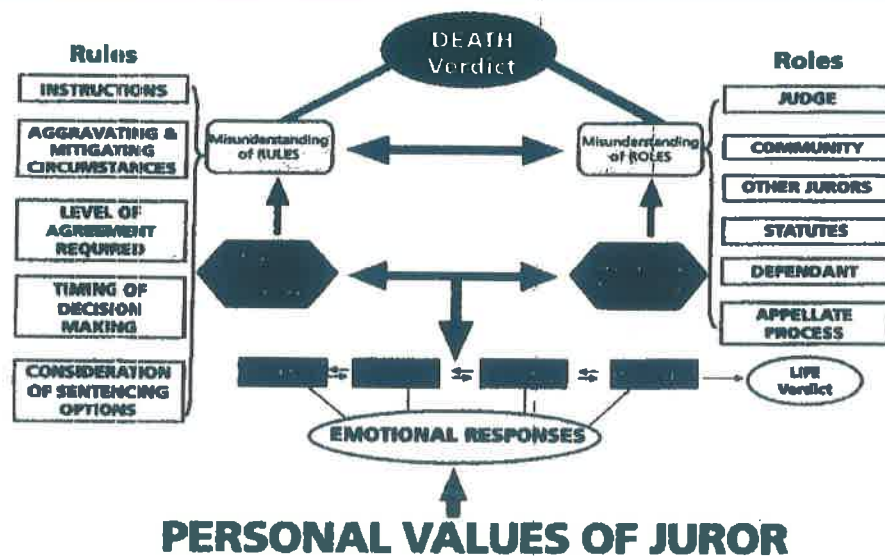
ately to the crimes against their victims, it is especially important that social workers serving as mitigation specialists present evidence with some finesse that humanizes defendants and clearly informs jurors about the scope of consequences that will arise from their decision.

In summary, it is clear that life and death verdicts are made for a variety of reasons unrelated to the actual facts of the case, the legal responsibilities of the jury, and the weight of the mitigating evidence that is presented. The literature clearly delineates the problem areas that can guide the interventions by social work practitioners involved in mitigation work and suggests important areas for forensic social work education and training.

#### A MODEL TO INFORM PRACTICE

When practice and empirical evidence is considered, the problems that surround juror decision making and mitigation practice are more complex than implied by the legal remedy (*Furman v. Georgia*, 1972) that requires evidentiary presentation of a thorough investigation of a defendant's background. Based on issues identified in a broad body of literature, the conceptual problem model shown in Figure 1 demonstrates the complicating feature

Figure 1: Factors Influencing Sentencing Decisions Problem Conceptualization



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of the problems that surround death penalty decisions. During preparation for trial, social workers must remain cognizant of how jurors' personal values and emotions will likely affect their decision making.

### Research and Practice Implications

The model delineates the areas that social work mitigation specialists are advised to consider when devising ways in which to improve practice outcomes in capital trials. It is clear that practice and empirical evidence on juror decision making suggests certain practical implications for social work mitigation specialists and legal professionals, allowing us to expand on traditional methods of inquiry and investigation and develop ways to use social work skills and advanced professional competencies to counter the effects of juror emotion, confusion, and abdication of roles and responsibilities. By broadening the focus of intervention beyond a psychosocial investigation of mitigating factors in a defendant's background, social workers create possibilities for intervening at multiple points in the legal system and process. A more systems-oriented approach requires social workers who act as mitigation specialists to take a more proactive role in the entire defense process. Going beyond the interpersonal work required to develop mitigating evidence to using education and advocacy strategies that provide richer, more fruitful consultancy to attorneys and the courts. A multidimensional, systems-oriented approach should help social work mitigation specialists apply the practice and empirical evidence discussed earlier to carve out a larger role in capital cases and improve both the mitigation investigation and work as part of a defense team. Proactive intervention at multiple points in the system and in the legal process promises better prospects for creating a link among the client, the defense team, and the jury. In the end, a larger role that applies practice and empirical evidence to social work and legal processes can help protect against the possibility that the evidence-based factors identified in our model will prevent jurors from concentrating on the mitigating circumstances detailed in the defendant's life story.

### Intervening in the System

*Intervening with Defense Attorneys.* To ensure that defense strategies that neutralize factors negatively influencing juror decision making, we advise social

workers to use relationship-building strategies that encourage a larger advisory role. Educating attorneys about the full range of social work skills and qualifications facilitates a more maximal social work role in the defense process. Informing attorneys about the risks outlined in professional literature and depicted in our model helps them plan trial strategies that may offset undesired decision-making factors and processes. Likewise, helping defense attorneys to develop improved relationship-building and interviewing skills not only enhances their ability to connect with potential jurors during voir dire (jury selection), but also results in thoughtful answers during voir dire on potentially life-threatening issues. This personal connection, and the resultant information gleaned from potential jurors, could assist the defense team in selecting individuals who will remain cognizant of the impact that their emotions have on their ability to make decisions. Jurors relate to the best communicator, and social workers can assist attorneys in learning how to communicate to the laypeople who will eventually become jurors (Caldwell, Perrin, & Frost, 2002).

*Intervening with the Team.* Through relationship building and education strategies, social workers can increase their role as a vital link between the defendant and members of the defense team (Schröder, 2003). Using basic and advanced interpersonal skills, social workers acting as mitigation specialists can expand their role by facilitating communication and collaboration and helping counsel recognize the effects of the existing power differential among themselves, the defendant, and jurors (Alfonso & Baur, 1986). Affecting inherent power differentials, social workers must model advocacy skills to help attorneys identify with and advocate for jurors in need of clarification as well as assist in creating an atmosphere that promotes supportive development of relationships. It is vital that judges provide clear instructions, and if they do not, jurors must be empowered to keep asking questions until they fully understand their obligations under the law. Attorneys must also advocate for the defendant, and this commitment must be clear to the defendant so he or she will cooperate with the attorney and the mitigation specialists during the trial. Finally, social workers must model advocacy skills to help attorneys identify with and advocate for changes in the legal system that must be made to deal with problems such as juror confusion and misunderstanding. The practitioner's role



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as advocate should extend to state legislatures where court procedures regarding jury instructions, jury questioning of the judge and witnesses, and juror note taking must be addressed by statute.

### **Intervening with the Jury**

**Selecting the Jury.** Like their highly trained forensic psychologist counterparts who have been working with attorneys to select juries for many years (Cutler, 1990; Fischhoff, 2003; Vore, 1989), social workers who—as a group—have been long employed to complete legally mandated defendant background investigations are increasingly being used by public defenders. Consequently, a growing number of social workers will undoubtedly find themselves in the position of assisting defense attorneys in jury selection. Social workers can most effectively intervene in this point of the legal system by applying best practices in assessment and in questionnaire development to the jury selection process to identify and screen out jury candidates who will be most likely to demonstrate potential for severe or erroneous decision making identified in the literature and our proposed model. For example, a large body of research suggests that early decision makers are more likely to vote for death, largely because they have not considered mitigating factors. So, it is vitally important to identify people with these tendencies during voir dire.

Using best research practices, survey questions should be structured in ways to identify jurors who have authority and compliance issues. These qualities can be determined by asking questions about issues not related specifically to the law but regarding biopsychosocial factors that jurors might respond to more readily and comfortably, such as medication compliance, paying taxes, and dealing with coworkers or neighborhood associations. To be sure, many potential jurors with compliance issues will be deemed appropriate (death qualified) for service. Therefore, it is vital for the defense team to identify the most “dangerous” of that group using peremptory challenges to exclude them from service. Being close to the jury selection process also helps mitigation specialists when developing the penalty phase testimony of experts, family, and friends. Knowing the jurors’ attitudes, values, and personal life experiences provides details that can be used to personalize the penalty phase testimony.

**Educating the Jury.** Social work mitigation practitioners should develop educational interventions

*Social work mitigation practitioners should develop educational interventions for the defense team to use to improve juror understanding of aggravating and mitigating circumstances.*

for the defense team to use to improve juror understanding of confusing issues, such as aggravating and mitigating circumstances. Clear language and rephrasing techniques should be used to guarantee that each juror has a clear understanding of and can explain, in his or her own words, what constitutes mitigating and aggravating circumstances.

Life history timeline diagrams, models of pathways into criminal behavior, and photographs are commonly used to help jurors come to know the defendant during the penalty phase (Guin & Merrill, 2000). Ogloff’s (“Jurors Can’t Understand,” 1998) preliminary use of decision trees to help jurors understand substantive instructions in making their decisions offers promise and could prove useful in assisting jurors in using mitigating evidence in their decision making in capital trials. Visual reinforcement of the rules and their application helps jurors use all of the information presented to them in an objective manner and promotes the integration of mitigating evidence into their overall deliberations. Decision trees can provide structure and organization to illustrate, explain, and simplify the penalty phase evidence and issues guiding jurors’ decisions with clarity that words alone cannot accomplish.

Furthermore, by sharing with the defense team knowledge of human behavior, social workers can help the team predict and develop trial strategies that are likely to minimize or neutralize jurors’ responses to complicated and often gruesome information about violent criminality and victimization. In addition, practitioners must also recommend competent experts who can discuss troublesome issues that often result in confusion and misunderstanding. For example, identification and recruitment of a correctional expert to testify about the realities of sentencing (life without the benefit of parole) and prison security issues during the penalty phase of the trial should alleviate juror confusion, frustration, and the desire “to know what the punishment would actually be if they did not

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impose a death sentence" (Bowers & Steiner, 1999, p. 605).

**Intervening with Defendant Clients.** Work with the defendant must include efforts to address negative pretrial demeanor and trial behavior that negatively affect juror's decisions. Remorse and responsibility are exceptionally difficult issues for many defendants to demonstrate, particularly defendants who suffer from mental illness or retardation and those who maintain their innocence. Helping clients understand the effects of their verbal and nonverbal communication styles and the defendant's active involvement in improving on those elements may increase the likelihood that he or she might build a more positive relationship with jurors. Bem's (1978) pioneering research purported that an individual's body language reveals more than two-thirds of the emotional meaning of a message. It is vitally important that social workers help defendants understand what their nonverbal behavior communicates to jurors and that those jurors may ascribe meaning to each and every gesture or expression both intentional and unintentional.

Often defendants admit to having some involvement in the crime for which they are being tried. It is important that the client admit being present or partially responsible for the outcome of the incident, if this is consistent with the legal strategy. Clients must understand the gravity of their behavior and the feelings of loss that the victim's loved ones are experiencing. In this way, jurors can see that although the client maintains that he or she did not kill the victim, he or she admits to playing some role in the victim's demise. Honest and sincere client reaction to the aggravating circumstances must reflect feelings of sadness, regret, remorse, and responsibility.

Attorneys often have difficulty working with clients to develop these feelings so they can be appropriately displayed on the witness stand; thus, the issue must be dealt with very early in the investigation and relationship-building process. Investigating the client's feelings regarding the crime may help elicit genuine responses that can be developed through journaling, artwork, and frank discussion later taken into the courtroom to mitigate the effects of the aggravating circumstances.

The defendants themselves often do not understand how they can participate in their own defense. Social workers who have developed a solid relationship with their client can assist him or her

in understanding what he or she can do to affect the sentencing outcome. Some will have little problem with this; however, many capital defendants are poorly educated, have borderline intelligence, or are mentally retarded or mentally ill. They will not make a positive impression in the courtroom without a great deal of education on the courtroom setting and roles and responsibilities of various court personnel, followed by practice or role playing. Role playing is especially helpful for the undereducated or disabled client to assist him or her in speaking clearly with proper tone and rate. Public speaking skills will also enhance the defendant's acceptability during pretrial status hearings if the judge speaks directly to the defendant. Proper grammar and syntax will give the client confidence and work to humanize him or her.

Later, during voir dire, if the defendant has the opportunity to speak before the jury selection pool, proper elocution gives potential jurors the opportunity to develop a larger construct of who this individual is. A person without a voice remains a mystery. A person charged with a heinous killing who is not allowed a voice becomes a silent beast to jurors as the evidence is put forth during the trial. Judgments are often made about people based on their physical appearance and verbal communication skills. The social worker is well equipped to assist difficult clients in presenting themselves in a manner that could be helpful to their defense.

## CONCLUSION

Because of the advocacy and social justice traditions of the profession as well as their specialized education, training, and experience, social workers are particularly well suited to work as part of a defense team in capital cases. Increasingly, social workers are becoming widely accepted and employed to complete legally mandated investigations, convey relevant information to officers of the court, and provide evidentiary presentations of death penalty defendants' background to juries. In this respect, social workers have gained entry into an area of practice that can be significantly improved by expanding their role to include interventions at multiple points in the legal system and process.

However, most social workers are added to defense teams composed of public defenders representing indigent clients. Consequently, there is a risk that social workers' role will be restricted because of misconceptions about the full range of

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their potential as defense team members. In contrast to higher paid psychologist—often in private practice—who act as trial and jury selection specialists, social workers may suffer the social bias and prejudice about competency and range of skill that comes from being viewed as public servants. We advise social workers to use their professional skills to gain the standing—enjoyed by too few in our profession—that is necessary to engage fully in mitigation practice that applies a systems approach and evidence-based knowledge.

The empirical evidence discussed here clearly delineates how juror emotion, confusion and disregard, and abdication of responsibility can lead juries to overlook mitigation evidence in capital trials. We propose a greater role for social workers as mitigation specialists in death penalty cases by using a systems approach that is informed by practice and empirical evidence to intervene at multiple points in the legal system and process. To accomplish this aim, social workers must be cognizant of the factors that influence juror decision making and the skills required to intervene to ensure a just legal process. A critical requirement of best practice in this arena is that social workers remain up to date on current legal research on juror decision making in capital trials, use traditional social work methods most effectively, and develop new competencies to meet the needs of the defense team, the client, and society.

Armed with an intellectual understanding of the value of mitigating circumstances, the practitioner must build relationships with the client and the client's friends and family to dig deeply into the recesses of spoken and recorded history to discover stories that depict the client accurately throughout the court process. Strong relationships must be built among defense team members and everyone involved in the client's life. These relationships may place the client at greater ease, improving his or her demeanor with resultant interactions witnessed by jurors working to humanize the defendant. By developing the conceptual problem model depicting the causal factors underlying the ineffectiveness of mitigation evidence in capital trials, it is hoped that social workers serving as mitigation specialists begin to link traditional social work skills to these points of intervention. From the initial meeting with the client until the last appeal is denied in a capital case, social workers must use their skills to educate, advocate, and build important relationships to en-

sure that the critical human issues that propel a person into criminality are made very clear throughout each phase of the trial. This may include the use of pictures, graphics, compelling expert testimony, and life history information that demands the undivided attention of jurors so they will retain key facts and carefully consider the issues.

The problem conceptual model must eventually lead to a multilevel intervention framework that can be formalized and tested using multivariate analysis to determine the effectiveness of mitigation when the issues identified in this article are actively addressed. Effective interventions will create opportunities for classroom instruction, field placement, and interdisciplinary collaboration among social work and law students, as well as much needed postgraduate and continuing education for the social work mitigation specialists and attorneys who currently fight for just decisions in capital trials. **SW**

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# Champion Magazine

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July 2005, Page 18

## Mitigation In The Death Belt - Twelve Steps To Saving Clients' Lives

*By Natman Schaye; Roseann Schaye-Glos*

Working in Arizona (state motto: "striving to be like Alabama"), we painfully learned the grand scope of ignorance among counsel and the courts in understanding the importance of mitigation. While Arizona may be near the end of the death belt, our western outpost is unquestionably very much a part of it. And Arizona has suffered from special problems with regard to mitigation.

As the nation learned from *Ring v. Arizona*,<sup>1</sup> our state is one of the little band that does not believe that jurors should be troubled with questions of life versus death.<sup>2</sup> Judges, of course, know how to sentence people. They were not to be troubled with mitigating evidence. They could just read the pre-sentence report, watch Mama cry, impose death, and still make it to the Mountain Oyster Club for an early lunch with cocktails. Arizona did not have "penalty phase trials." It had "sentencings."

What was the result? We packed our death row with 126 of our clients. That may not sound so bad, but our small population consistently places us near the top in death row inmates per capita. For purposes of context, consider the other members of the Four Corners Society — New Mexico, Colorado, and Utah. They have a total death row population of 16. Arizona has executed 22, more than three times the number of our sister states combined. And those states do not share Arizona's good fortune of being in the Ninth Circuit.

### Into The Light

A beacon of hope shined upon the death belt in recent times. Any doubt about the importance — make that necessity — of thoroughly gathering and persuasively presenting mitigating evidence disappeared as the result of three missives sent from Washington in the past couple of years. First, in *Ring*, the Supreme Court required that juries, not judges, decide whether an individual may be sentenced to death. Lawyers in Arizona and similar enclaves were forced to recognize that capital punishment is doled out at a penalty-phase trial, not simply a "sentencing." Second, in February 2003, the American Bar Association issued revised "Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases"<sup>3</sup> ("ABA Guidelines"), setting a substantially higher standard of professionalism in capital representation. Finally, the recent decision in *Wiggins v. Smith*<sup>4</sup> clearly and conclusively established the necessity of extensive mitigation work and the persuasive authority of the ABA Guidelines.

Say Good-Bye To Business As Usual



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"Mama Cried" (with apologies to Merle Haggard) capital sentencing should never be seen again. So said the Supreme Court in Kevin Wiggins' case.

Kevin was convicted of drowning a 77-year-old woman and rifling her home.<sup>5</sup> At the penalty phase, his lawyers focused their efforts on the claim that he did not personally commit the murder. They did not present traditional mitigation evidence. The jury returned a death verdict.<sup>6</sup>

In post-conviction proceedings, new counsel presented extensive evidence of Kevin Wiggins' tragic life history, including physical, sexual and emotional abuse at the hands of his natural mother and foster parents.<sup>7</sup> His trial attorney testified that defense counsel chose to pursue their client's lack of personal responsibility for the murder instead of focusing on his history. Although the trial judge stated "that he could not remember a capital case in which counsel had not compiled a social history of the defendant," he denied the ineffective assistance claim because the absence of investigation was a matter of strategy.<sup>8</sup>

The case eventually reached the Supreme Court, where habeas corpus standards required Kevin Wiggins to demonstrate that the state courts' denial of his ineffective assistance claim was not simply error, but "objectively unreasonable."<sup>9</sup> The Court applied the standard to the familiar two-pronged performance and prejudice test of *Strickland v. Washington*.<sup>10</sup>

The Court noted that the trial attorneys retained a psychologist to conduct numerous tests on their client, reviewed a pre-sentence report, and social service records.<sup>11</sup> The Court found that the attorneys' failure to obtain a complete social history violated Kevin Wiggins' Sixth Amendment rights. The decision is critically important in at least two respects. First, the Court's decision recognized that it has "long" relied on ABA standards "as 'guides to determining what is reasonable.'"<sup>12</sup> The same is true of federal circuit courts.<sup>13</sup>

Second, the Court specifically noted that the Wiggins attorneys failed to comply with former ABA Guideline 11.4.1(C), which requires that mitigation investigations include "efforts to discover all reasonably available mitigating evidence and evidence to rebut any aggravating evidence that may be introduced by the prosecutor."<sup>14</sup> Making itself perfectly clear, the Court continued:

Despite these well-defined norms, however, counsel abandoned their investigation of petitioner's background after having acquired only rudimentary knowledge of his history from a narrow set of sources. Cf. *id.*, 11.8.6, p. 133 (noting that among the topics counsel should consider presenting are medical history, educational history, employment and training history, family and social history, prior adult and juvenile correctional experience, and religious and cultural influences) (emphasis added). . . .<sup>15</sup>

The trial attorneys were found to have been ineffective both for failing to conduct a sufficiently broad investigation and for failing to follow leads presented by the limited records they obtained.<sup>16</sup> Similar failures occur regularly in America's courts.

The Court concluded that the defense established prejudice sufficient to require a new penalty trial. While the standard for ineffectiveness is always high, the Court shed an additional ray of hope as to this prong of the *Strickland* test, "Had the jury been able to place petitioner's excruciating life history on the mitigating side of the scale, there is a reasonable probability that at least one juror would have struck a different balance."<sup>17</sup> A showing of prejudice does not require evidence sufficient to move an entire jury panel, only one of twelve members.

#### Teachings Of The ABA Guidelines —Twelve Steps To Saving Clients' Lives

The ABA has become a powerful ally in the campaign to bring the death penalty era to a close. The new Guidelines are one of the most important steps taken to ensure that, if the death penalty is going to be around, it must be administered with a modicum of fairness.

The Guidelines make no bones about their goal "The objective of these Guidelines is to set forth a national standard of practice for the defense of capital cases in order to ensure high quality legal representation for all persons facing the possible imposition or execution of a death sentence by any jurisdiction."<sup>18</sup> The Guidelines apply to every stage of a case from the time of

Scanned Jun 18, 2013

arrest through clemency proceedings.<sup>19</sup> The Guidelines have plenty to say about mitigation.

From these sources, as well as the teachings of many outstanding litigators and mitigation specialists, comes *Twelve Steps to Saving Clients' Lives*.

**Step One: Form A Defense Team Consisting Of At A Minimum Two Lawyers, One Investigator And One Mitigation Specialist<sup>20</sup>**

The defense team must be assembled ("team" being the operative word) "as soon as possible" after lead counsel is assigned.<sup>21</sup> At a minimum, "The defense team should contain at least one member qualified by training and experience to screen individuals for the presence of mental or psychological disorders or impairments."<sup>22</sup> Mental status is relevant to the ability to understand Miranda warnings, competency, sanity, capacity to premeditate, capacity to waive rights, mental retardation, and the imposition of a death sentence. Further:

Creating a competent and reliable mental health evaluation consistent with prevailing standards of practice is a time-consuming and expensive process. Counsel must compile extensive historical data, as well as obtaining a thorough physical and neurological examination. Diagnostic studies, neuropsychological testing, appropriate brain scans, blood tests or genetic studies, and consultation with additional mental health specialists may also be necessary.

Counsel's own observations of the client's mental status, while necessary, can hardly be expected to be sufficient to detect the array of conditions (e.g., post-traumatic stress disorder, fetal alcohol syndrome, pesticide poisoning, lead poisoning, schizophrenia, mental retardation) that could be of critical importance.<sup>23</sup>

A lawyer does not have the time, the insight, the ability, or the skills to fulfill this role. No matter what the local pattern or practice has been, no matter what trial judges may say, this is not pie-in-the-sky stuff. This is a fundamentally necessary resource to which every one of our clients is entitled. A mitigation specialist is not a paralegal, investigator/ex-cop, or former probation officer. While there are exceptions, most mitigation specialists have graduate degrees in social work or a mental health discipline and plenty of field experience. They are not underlings whose opinions are of little importance and whose role is to spend time at the jail to "keep the client happy." Mitigation specialists are experts.

**Step Two: Develop A Relationship Of Trust With The Client And Witnesses**

Without trust, there cannot be effective communication or information gathering. The ABA illustrates:

Mitigation specialists possess clinical and information-gathering skills and training that most lawyers simply do not have. They have the time and the ability to elicit sensitive, embarrassing and often humiliating evidence (e.g., family sexual abuse) that the defendant may have never disclosed. They have the clinical skills to recognize such things as congenital, mental or neurological conditions, to understand how these conditions may have affected the defendant's development and behavior, and to identify the most appropriate experts to examine the defendant or testify on his behalf.<sup>24</sup>

Clients suffering from mental illness or retardation are often quite skilled in hiding it, and expertise is required to uncover these facts.<sup>25</sup> It is not helpful, and can in fact be detrimental to ask a client or family member to fill out a "mitigation questionnaire." Such information must be obtained during personal interviews. And it is not enough that a relationship of trust exist between the mitigation specialist and the client. The relationship must extend to defense counsel and to those who play an important role in the client's life:

Establishing a relationship of trust with the client is essential both to overcome the client's natural resistance to disclosing the often personal and painful facts necessary to present an effective penalty phase defense ... and to ensure that the client will listen to counsel's advice on important matters such as whether to testify and the advisability of a plea. Client contact must be ongoing. An occasional hurried interview with the client will not reveal to counsel all the facts needed to prepare for trial, appeal, post-conviction review, or clemency. Similarly, a client will



Scanned Jun 18, 2013

not — with good reason — trust a lawyer who visits only a few times before trial, does not send or reply to correspondence in a timely manner, or refuses to take telephone calls. It is also essential for the defense team to develop a relationship of trust with the client's family or others on whom the client relies for support and advice.<sup>26</sup>

The development of trust takes time and skill on the part of the mitigation specialist as well as teamwork throughout the defense team. Is this an easy task? Of course not. Our clients would not be where they are if they were effective communicators, open about their problems, and able to develop healthy relationships. But these problems are inherent in capital defense work and must be addressed, "Often, so-called 'difficult' clients are the consequence of bad lawyering . . ." <sup>27</sup> Keep in mind that our clients are usually very different from the members of the defense team in significant respects such as age, race or ethnicity, religion and economic status. In forming the team, try to include members with whom the client may more easily identify. We must overcome these difficulties and differences to develop a relationship of trust. "[T]he failure to maintain such a relationship is professionally irresponsible."<sup>28</sup>

#### Step Three: Gathering All The Information Records

It is nearly impossible to have lived in this day and age without leaving a long paper trail. As to a client, relevant records begin "with the moment of conception."<sup>29</sup> And records on the client are not nearly enough. It is critical to obtain records for as many generations as possible, but always as far back as grandparents and as far out as first cousins, "A multi-generational investigation frequently discloses significant patterns of family dysfunction and may help establish or strengthen a diagnosis or underscore the hereditary nature of a particular impairment."<sup>30</sup>

Hard work is necessary to gather all the information. Records to be collected on the client and family include those relating to birth, death, arrests, court proceedings including civil court, divorce, employment, jail and juvenile, marriage, physical or mental health, military service, incarceration, probation or parole, school, social services, INS, and Social Security administration for a start.<sup>31</sup>

One reason mitigation work needs to begin at the beginning is that records can take up to a year to arrive, particularly military and Social Security records. The mitigation specialist can acquire authorizations for release during the initial meetings with the client and family. Record requests can begin well before the relationships develop unless there is an individual who refuses to sign a release form initially. This individual may be persuaded to be co-operative during future visits. This individual requires return visits. If refusal continues, however, that can also become a mitigating factor. In some cases, subpoenas may be necessary. Records may be hard to locate and the record keeper may be loath to provide assistance. A mitigation specialist must therefore be tenacious. Often this requires personal appearances where the records are located. Identifying the right person in the records department — and buying them flowers — can aid in locating old records stored on microfiche or in a dank basement. And do not accept a clerk's statement that the records have been destroyed without digging further to ensure that the clerk does not really mean, "It would be too much trouble."

Records can also lead to additional witnesses. An example would be Baptismal records that show the names of godparents. These witnesses would likely have knowledge of at least some of the early history of the child and family and possibly of the existence of other records.

#### Step Four: Gathering All The Information Interviews

As with obtaining records, everyone must be interviewed, a daunting, but necessary task. We have learned, "[P]enalty phase preparation requires extensive and generally unparalleled investigation into personal and family history."<sup>32</sup> The next door neighbor when the client was six may remember the name of a neighbor across the street. The neighbor across the street may have had a nephew who saw the client raped by his mother's boyfriend. Interviewees must include family members, friends, ex-wives or girlfriends, neighbors, teachers, doctors, counselors, probation officers, employers, co-workers, cell mates, and on and on.<sup>33</sup> And repeated interviews may be required of many of these individuals. People develop trust on different schedules; some will take much longer than others before divulging information. In

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addition, the mitigation specialist may determine that another defense team member would be more effective interviewing a boyhood friend (for example) than the mitigation specialist would.

The client and witnesses must understand that they must not edit reality and only provide "the good stuff." If the client hurt a pet or molested a friend's little sister, the defense team needs to know. These are not facts to learn during the penalty phase trial. More importantly, it is critical to understand everything about the client. Depraved conduct does not develop from thin air. There are causes. And causes found lead to evidence in mitigation.

A client's history may require specialized, expert assistance during the investigation. Is there evidence that the client suffers from fetal alcohol syndrome? Was the client raised in a culture that did not match his or her ethnicity? Was the client exposed to toxins as a child, perhaps from a nearby landfill or factory, or from pesticides in a migrant farm working environment?<sup>34</sup> And if the client suffered prior convictions, they must be investigated to determine what actually occurred and whether they are subject to attack.<sup>35</sup>

Of course, obtaining the necessary information usually "requires overcoming considerable barriers, such as shame, denial and repression, as well as other mental or emotional impairments from which the client may suffer."<sup>36</sup> This may lead a client to object to the mitigation investigation.

#### Step Five: The Investigation Must Go On

Every measure must be taken to obtain the client's and witnesses' cooperation. This begins with Step Two, developing a trusting relationship. The client must receive assurances that the investigation is run-of-the-mill in every case. If the client objects, the mitigation specialist must work to determine whether this is the product of a mental or emotional problem which may require proceeding — at least initially — without the client's assistance. Bring in people the client loves or trusts — or even a former death row inmate — to obtain cooperation. If the client claims to be innocent and would rather die than be imprisoned for life explain that the mitigation investigation may convince the prosecution to drop its quest for death pretrial, which means no "death qualified" jury, which means a much better chance of acquittal. Further, let the client know that the mitigation investigation will allow counsel to personalize the client and will therefore help convince the jury that the client is innocent. Even if convicted, the mitigation case can help convince an appellate court to reverse. No matter what, do not give up on obtaining cooperation.<sup>37</sup>

But: what is to be done if, despite the team's every effort, the client refuses to cooperate? The team's duty remains clear, "The investigation regarding penalty should be conducted regardless of any statement by the client that evidence bearing upon penalty is not to be collected or presented."<sup>38</sup> In an early post-Wiggins appellate decision, the Sixth Circuit held that the failure to follow this edict supported a claim of ineffective assistance of counsel.<sup>39</sup> So keep up the good work!

#### Step Six: The Mitigation Theme Must Be Developed Early And Woven Through Every Part Of The Case

Mitigation specialists play a defining role in developing the theme that will be used to achieve the goal — not try the case, get an acquittal, or look good in court — the goal is always to save the client's life.

Perhaps most critically, having a qualified mitigation specialist assigned to every capital case as an integral part of the defense team insures that the presentation to be made at the penalty phase is integrated into the overall preparation of the case rather than being hurriedly thrown together by defense counsel still in shock at the guilty verdict. The mitigation specialist compiles a comprehensive and well-documented psycho-social history of the client based on an exhaustive investigation; analyzes the significance of the information in terms of impact on development, including effect on personality and behavior; finds mitigating themes in the client's life history; identifies the need for expert assistance; assists in locating appropriate experts; provides social history information to experts to enable them to conduct competent and reliable

Mitigation In The Death Belt - Twelve Steps To Saving Clients  
 Scanned Jun 18, 2013

evaluations; and works with the rest of the defense team and experts to develop a comprehensive and cohesive case in mitigation.<sup>40</sup>

This is of critical importance, because, "Counsel should seek a theory that will be effective in connection with both guilt and penalty, and should seek to minimize any inconsistencies."<sup>41</sup> The theme must be consistently applied to obtain resources, pursue motions, exclude evidence, secure a plea agreement, voir dire potential jurors, and — if all else fails — succeed at trial.

It is in this step that we begin to think about how to humanize the client to the jury. We want to show the jury from the outset that our client is a human being with faults, feelings, family, disappointments, and the like. It is much harder for a jury to kill someone that they know.

#### Step Seven: Developing Depictions Of The Client's Life And Family History

We have learned that people — lawyers, defense teams, judges, jurors and yes, even prosecutors, need visual depictions to best absorb, organize, and integrate information. This is particularly important with complex issues, such as a client's life and family history. The defense team, led by the mitigation specialist, must draw a genogram or family tree of the client's family. This helps the team recall who is who as information becomes available.

In addition, a genogram can lead to exhibits that provide powerful demonstrative evidence. For example, one client was adopted as an infant and raised in a stable, nurturing family. The social history investigation of the families of the client's biological parents demonstrated long histories of mental illness, drug abuse, and anti-social behavior. The defense theme was that the client was, to a large extent, biologically programmed in such a way that he had many problems which were not discovered until it was too late. By creating large genograms of the biological and adoptive families, with color coding of illness, abuse, and anti-social behaviors, the defense team presented a powerful picture comparing the adoptive family's pure white genogram with the biological family's, which was as colorful as a Christmas tree.

On an even larger scale, a time line of the client's history and life must be created. This begins as far back as information gathered allows, hopefully at least as far back as the great grandparents. This can be done visually, with an actual line and events marked on the line or by a written description of events. The advantage of seeing events on a line can have an impact and may be developed into a powerful exhibit.

Demonstrative materials for use in plea negotiations, motions or at trial are, of course, not limited to genograms or time lines. Guideline 10.11(F)(5) provides that, for a penalty phase, materials to be considered regarding the client include, "Demonstrative evidence, such as photos, videos, and physical objects (e.g. trophies, artwork, military medals), and documents that humanize the client or portray him positively, such as certificates of earned awards, favorable press accounts, and letters of praise or reference." The development of effective demonstrative evidence is limited only by the combined imagination of the defense team. Of course, sometimes imaginations, ideas and egos can run wild.

#### Step Eight: The Mitigation Specialist Must Act As A Liaison Within And Beyond The Defense Team

This role continues throughout the case and, while it may arise in a variety of circumstances, it can be broken into two categories. The first category involves communication. The defense team must be kept apprised of the status of the mitigation investigation and the client. With e-mail, it is easy to keep the entire team apprised of everything that occurs. And the mitigation specialist can also be given the primary role of ensuring that the client is kept current on events in the case. Being a liaison not only reduces communication problems, but can avoid conflicts. Clients have no control of events inside jail, let alone outside jail, and may obsess on minor issues. One client, several months before trial, was extremely worried about what his wife would wear during the trial. The mitigation specialist can help the client resolve the issue without discounting the client's concern and leave the lawyers free from having to deal with such issues.



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The second category involves conflict resolution. Conflicts may arise between the client and the lawyer, the lawyer and the client's family, the client and the family and so forth. The mitigation specialist — typically far better at listening and at dispute resolution than a lawyer — is able to diffuse and settle disagreements that may otherwise have disastrous consequences.

#### Step Nine: The Mitigation Specialist Must Take The Lead In Identifying Categories Of Experts And Locating Experts Who Will Personalize The Client And Explain The Client's Misconduct

It is critically important that the defense team not be in too much of a rush to take this step.

In the upcoming Diagnostic and Statistic Manual,<sup>42</sup> the leading guide for mental health professionals, a complete social history will be required as a part of a psychiatric or psychological evaluation. What "complete" means will be open to interpretation, but it is very helpful to the expert if the social history investigation is nearing completion so that all relevant information is available. This is the reason that the defense team needs to wait if at all possible, to initiate the assessment(s). Occasionally, an evaluation needs to be "buried." However, the best experts are able to discover what it is that really makes our clients tick.

The time for selection of experts is the point at which the mitigation specialist's mental health background is particularly significant.<sup>43</sup> The specialist must conduct a casual assessment of the client to aid in choosing the types of experts, as well as the specific individuals to do the evaluations. Oftentimes an attorney will want to use the same neuropsychologist repeatedly, but it is doubtful that any person could be the best person to work with every client. Individual clients have individual, frequently very specific needs, often requiring the defense team to obtain the assistance of experts who are outside of the locality or state where the litigation takes place. But experts, no matter how impressive, must not be left to make their own decisions regarding a client's needs.

#### Step Ten: The Mitigation Specialist Must Ensure That Experts Serve Their Purpose

Experts are very smart people. They often want to take control of the situation, diagnose, and treat the client. This can result in disaster. Each expert is employed for a specific purpose and is a cog in the greater machine designed to save the client's life. This maxim must guide all decisions regarding experts, which consider all relevant facts, including what information may end up in the hands of the prosecution. Each expert's role must be clearly defined and communicated by the defense team, usually with the mitigation specialist in the lead.

For example, psychiatrists and psychologists use personality testing to aid in diagnoses. Such testing, using instruments like the Minnesota Multi-Phasic Personality Inventory (MMPI), may provide helpful treatment tools, but can be extremely damaging for a capital penalty trial and should virtually never be administered to a client (for reasons beyond the scope of this article). Suffice it to say that the purpose of a thorough evaluation is not to diagnose the client, but to understand how the client's symptoms led to the capital crime. More than one psychologist has claimed — contrary to the teachings of endless prior cases — that their evaluation would have no credibility if personality testing was not done. Experts have given such tests after being specifically told not to do so. The mitigation specialist should be present during testing, if at all possible. Experts must not run the show. Strong oversight and intervention from the defense team is necessary to avoid runaway experts.

If all of these steps are followed, the team can close in on the home stretch.

#### Step Eleven: The Defense Team Must Put Everything Together To Develop A Compelling Picture Of The Client's Life

The goal must never be "to justify or excuse the crime 'but to help explain it.'"<sup>44</sup> Stated more expansively:

Equally important, mitigation is the unique set of facts surrounding one defendant's life. Its

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specificity and concreteness attach to one individual. Mitigation is not a conclusory label ("abuse"), but a biography of disability and deficits, hardships and unchosen life experiences.<sup>45</sup>

The most effective presentation is composed of extensive lay testimony enhanced with demonstrative evidence that provide the elements of the picture that shows the path that led the client to kill. The elements are brought together through the testimony of the experts.

#### Step Twelve: Seek A Non-Trial Disposition

The goal of resolution is beyond question, "Counsel at every stage of the case has an obligation to take all steps that may be appropriate in the exercise of professional judgment in accordance with these Guidelines to achieve an agreed-upon disposition."<sup>46</sup> Undoubtedly, the defense must be careful not to unnecessarily reveal mitigation evidence when doing so will work to the client's disadvantage at trial. That said, the duty to seek a plea for life lies at the foundation of the defense team's goal. Simply put, non-trial resolutions are not "reached" in death cases, they are won.

#### Never Give Up

The judicial system — and therefore capital litigation — is littered with politics and bureaucrats. Defense teams must continue to fight and fight even harder to get the time, the support and the resources necessary to defend our clients as required by these standards. If we do that much, the shame of putting our people to death will surely be erased from the halls of American justice. Notes

1. 536 U.S. 584, 122 S. Ct. 2428, 153 L. Ed. 2d 556 (2002).
2. Regardless, because judges shouldn't have all the fun, jurors were still death qualified — required to promise that they could kill to be allowed to sit in capital cases.
- 3 The Guidelines are reproduced with excellent commentary at [http:// www.abanet.org/deathpenalty/HofstraLawReview.pdf](http://www.abanet.org/deathpenalty/HofstraLawReview.pdf) 31 Hofstra L. Rev. 903 (2003).
4. 539 U.S. 510, 123 S. Ct. 2527, 156 L. Ed. 2d 471 (2003).
5. 123 S.Ct. at 2531-2532.
6. Id. at 2532.
7. Id. at 2532-2533.
8. Id. at 2533.
9. Id. at 2535.
10. 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).
11. 123 S.Ct. at 2536.
12. Id. at at 2536-2537, quoting *Strickland v. Washington*, 466 U.S. at 688.
13. See, e.g., *Coleman v. Mitchell*, 268 F.3d 417, 450 (6th Cir. 2001), quoting *Carter v. Bell*, 218 F.3d 581, 596 (6th Cir. 2000); *Frye v. Lee*, 235 F.3d 897, 904 n.7 (4th Cir. 2000).
14. 123 S.Ct. at 2537 (emphasis in original).
15. Id.
16. Id. at 2537-2538.
17. Id. at 2543 (citation omitted) (emphasis supplied).

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18. Guideline 1.1(A).
19. Guideline 1.1(B).
20. Guideline 4.1(A)(1).
21. Guideline 10.4(C); commentary to Guideline 10.7 at 82.
22. Guideline 4.2(A)(2).
23. Commentary to Guideline 4.1 at 31 (footnotes omitted).
24. Id. at 33 (footnotes omitted).
25. Commentary to Guideline 10.7 at 71 n.181.
26. Commentary to Guideline 10.5 at 70 (footnote omitted).
27. Id.
28. Id. at 72 (footnote omitted).
29. Commentary to Guideline 10.7 at 81 (footnote omitted).
30. Id. at 83 (footnote omitted).
31. Id. at 84.
32. Commentary to Guideline 10.7 at 81, quoting Stetler, *Mitigation Evidence in Death Penalty Cases*, *The Champion* at 35 (Jan./Feb. 1999).
33. Id. at 81-82.
34. Id. at 84.
35. Id. at 85.
36. Id. at 82.
37. Commentary to Guideline 10.7 at 71.
38. Guideline 10.7(A)(2).
39. *Hamblin v. Mitchell*, 354 F.3d 482, 493 (6th Cir. 2003).
40. Commentary to Guideline 4.1 at 33 (emphasis supplied). This is of critical importance, because, "Counsel should seek a theory that will be effective in connection with both guilt and penalty, and should seek to minimize any inconsistencies."
41. Guideline 10.10.1(A).
42. American Psychiatric Association, 5th ed.
43. Commentary to Guideline 10.11 at 108, quoting Sundby, *The Jury as Critic: An Empirical Look at How Capital Juries Perceive Expert and Lay Testimony*, 83 Va. L. Rev. 1109, 1140-41 (1997).
44. Stetler, *Mitigation Evidence in Death Penalty Cases*, *The Champion* at 40 (Jan./Feb. 1999).
45. See Commentary to Guideline 10.11 at 108-109.



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46. Guideline 10.9.1(A). n

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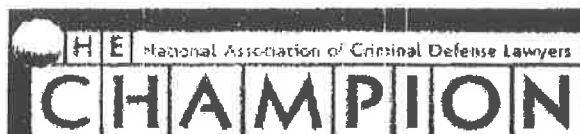
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MARY LOPEZ BUITRON, CSR, RPR  
*Official Court Reporter - 94th District Court*



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 [Print or Email This Page](#)

June 2004, Page 31

### Capital Cases-- Dimensions of Mitigation

By Russell Stetler; Kathleen Wayland

#### Capital Cases-- Dimensions of Mitigation

A process that accords no significance to relevant facets of the character and record of the individual offender or the circumstances of the particular offense excludes from consideration in fixing the ultimate punishment of death the possibility of compassionate or mitigating factors stemming from the diverse frailties of humankind. It treats all persons convicted of a designated offense not as uniquely individual human beings, but as members of a faceless, undifferentiated mass to be subjected to the blind infliction of the death penalty. *Woodson v. North Carolina*<sup>1</sup>

In 1976, the Supreme Court began defining what constitutes mitigation in capital cases, and it did so in the broadest conceivable terms — speaking of the “diverse frailties of humankind” as the source of mercy and empathy. Decades earlier the writer Arthur Koestler spoke of the “shuddering recognition of a kinship” which evokes the response “here but for the grace of God, hang I” in the face of a condemned prisoner at the gallows.<sup>2</sup> The diverse frailties bestow the kinship of humankind. We all have them, to varying degrees. For most of us, the frailties are more than offset by the protective supports of family and society, as well as our individual strengths. For many capital clients, the frailties are overwhelming, and the supports are absent. Eighth Amendment jurisprudence confers compensatory protection to allow life-and-death decision makers to extend compassion on an individual basis.

Although many cases recite the tripartite formula of character, record, and circumstances of the offense, the U.S. Supreme Court has made clear that this formula is not a boundary. In *Skipper v. South Carolina*,<sup>3</sup> the Court held that the defense should have been permitted to introduce evidence of “good adjustment” to jail even though it “would not relate specifically to petitioner’s culpability for the crime he committed” because “there is no question but that such inferences would be ‘mitigating’ in the sense that they might serve as a basis for a sentence less than death.”<sup>4</sup>

In *McCleskey v. Kemp*,<sup>5</sup> the Court reminded that “States cannot limit the sentencer’s consideration of any relevant circumstance that could cause it to decline to impose the penalty. In this respect, the state cannot channel the sentencer’s discretion, but must allow it to consider any relevant information offered by the defendant.”<sup>6</sup>

With *Atkins v. Virginia*,<sup>7</sup> the Court extended a categorical protection to those prisoners who meet the criteria for mental retardation. These prisoners have been deemed so disabled as to require exemption from the capital punishment sentencing scheme altogether. But the Court has also recognized in its two recent ineffective counsel cases (*Williams v. Taylor*<sup>8</sup> and *Wiggins*



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v. *Smith*) that even individuals who do not meet the strict criteria for exemption lie close enough on a spectrum of disability that their limited intellectual functioning also constitutes powerful mitigation.

The spectrum of disability that characterizes limited intellectual functioning has also been recognized by researchers in the mental health field. As noted in a discussion on the classification of mental disorders, "intelligence is a multifactorial construct with a variety of complexly interacting etiologies that is best described as a continuous variable . . . there does not appear to be a discrete break in its distribution that would provide a qualitative distinction between normal and pathologic intelligence."<sup>10</sup> Although considerable thought and research support a selection of an IQ of 70 as providing a meaningful and reasonable point at which to characterize lower levels of intelligence as resulting in clinically significant impairment and the possible need for clinical intervention, this point of demarcation does not distinguish the presence versus absence of an underlying pathology. It is only one point along a continuous distribution of cognitive functioning. In addition, there are persons with IQs below 70 for whom a qualitatively distinct physical disorder is evident, such as Down's or Fragile X Syndrome, that can often be traced to a specific biological event.

The 2002 report of the President's Commission on Special Education also addressed the dimensionality of mental retardation, in this instance in the educational context. Speaking of mental retardation and other developmental disorders, the report noted that there are objective criteria for identifying the disorders, but continued, "However, the model for identification is like that used for obesity or hypertension, not measles or meningitis. The disorder is always a matter of degree on a dimension, not a disorder that you have or do not have, and identification is ultimately a judgment based on the need for services."<sup>11</sup>

Indeed, the need for services and the availability of funding for these services have always influenced the legal criteria for mental retardation. When the first Diagnostic and Statistical Manual (DSM) was published by the American Psychiatric Association in 1952, the degrees of intelligence defect used the same nomenclature as in later editions (mild, moderate, or severe) but very different numerical cutoffs:<sup>12</sup>

#### DSM I (1952) DSM III (1980)

Mild 70 to 85 55 to 70

Moderate 50 to 70 35 to 49

Severe below 50 20 to 34

In effect, the definition of mild (compared to severe) mental retardation was changed from subaverage intellectual functioning falling one standard deviation below the mean to two standard deviations. This adjustment sharply reduced the population eligible for services: a full scale score of 80 on the Wechsler IQ test ranks in the ninth percentile, whereas a score of 70 ranks in the second.

In *Williams v. Taylor*, one of the five categories of mitigating evidence which trial counsel had failed to introduce was borderline mental retardation<sup>13</sup> and Williams' failure to advance beyond sixth grade in schooling.<sup>14</sup> In *Wiggins v. Smith*, limited intellectual capacity,<sup>15</sup> also characterized as borderline retardation<sup>16</sup> and reflecting a full scale IQ of 79,<sup>17</sup> is part of what the Court found to be powerful mitigation which the jury should have heard about.<sup>18</sup>

The Court's recognition of dimensionality in the area of mitigation is not new at all. Its most eloquent discussion, in fact, came in *Eddings v. Oklahoma*.<sup>19</sup> While it declined to exempt from execution an individual who was only sixteen years old at the time of the crime, the Court noted:

But youth is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage. Our history is replete with laws and judicial recognition that minors, especially in their earlier years, generally are less mature and responsible than adults. . . . Even the normal 16-year-old customarily lacks the maturity of

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an adult. In this case, Eddings was not a normal 16-year-old; he had been deprived of the care, concern, and paternal attention that children deserve. On the contrary, it is not disputed that he was a juvenile with serious emotional problems, and had been raised in a neglectful, sometimes even violent, family background. In addition, there was testimony that Eddings' mental and emotional development were at a level several years below his chronological age. All of this does not suggest an absence of responsibility for the crime of murder, deliberately committed in this case. Rather, it is to say that just as the chronological age of a minor is itself a relevant mitigating factor of great weight, so must the background and mental and emotional development of a youthful defendant be duly considered in sentencing. 20

The reference to mental age "several years below his chronological age" is another way of describing low intellectual functioning, which is assessed in relation to age peers.

Neuroscientific research in the intervening two decades since Eddings has provided further evidence that the human brain continues to develop as individuals reach their early twenties.<sup>21</sup> For example, maturational processes such as the increase and subsequent elimination ("pruning") of the brain's gray matter may not be completed until late adolescence. Research shows that myelination, the process by which the brain's white matter, or "insulation," refines the operation of neural networks regulating behavior, continues into the early twenties. Further, the brain myelinates from the more primitive to the more complex areas, with the frontal lobes being the last part of the brain to undergo this process. As the frontal lobes are the part of the brain that govern impulsivity, judgment, planning for the future, and ability to anticipate consequences, this research shows that neurodevelopmentally adolescents are less able to control and plan their behavior than are adults:

[E]brain scan techniques have demonstrated conclusively that... phenomena observed by mental health professionals in persons under eighteen that would render them less morally blameworthy for offenses have a scientific grounding in neural substrates.<sup>22</sup>

Taken together, brain anatomy data indicate that people are not biologically prepared to exercise mature emotional and behavioral control until they reach adulthood.

In the case of both age and intellectual functioning, the law has drawn a variety of bright lines.

There is a minimum age to operate a motor vehicle, to vote, to drink alcohol, to serve in the armed forces, to serve as President of the United States, or to be eligible for execution.

Numerous state and federal statutes have defined intellectual disabilities for purposes of benefits and protections. These bright-line tests provide a clear answer to some questions: a fifteen-year-old may not drink alcohol and a 29-year-old may not be elected president, regardless of their individual reputations for maturity and wisdom. The tests exclude or include individuals in particular legal categories. But they often tell us nothing beyond that legal fact.

They tell us which individuals meet certain criteria for exclusion, but they tell us nothing about the individual characteristics of those who are not excluded.<sup>23</sup>

Age is more than a chronological fact, and intellectual functioning is more than an IQ score. The individual who has attained the minimum age to be served alcohol does not automatically drink responsibly. The individual whose IQ is in the 80s has an intellectual handicap, even if she does not meet the criteria for mental retardation. (And a generation earlier, when the criteria were different, she would have qualified!)

In medicine, the dimensionality of many disorders is well understood by physicians and patients alike. Obesity is well defined (body mass index of 30 or more), but the overweight individual (body mass index = 25.0 to 29.9) who does not quite meet the criteria for obesity is still at risk for heart disease, certain cancers, type 2 diabetes, stroke, arthritis, breathing problems, and psychological disorders (such as depression). Hypertension also has clear definition (blood pressure of 140 or more, over 90 or more). Borderline elevation (130-139 over 85-89) still puts the patient at risk to damage arteries, heart and kidneys, or suffer atherosclerosis or stroke. Large-scale epidemiologic studies have increased our awareness of the dimensional relationship between blood pressure and risk, and led to continual downward adjustments of readings considered to be problematic. 24

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In mitigation, the dimensionality of human frailty means that categorical compassion (protection from execution for people with mental retardation or teenagers below a certain age) merely anchors one end of a spectrum. Those who are nearer that end are still very disadvantaged, even when they are outside the exempt category. They are functioning with brains that are damaged or not yet fully developed. They are behaving impulsively not by choice but because their regulatory apparatus is not working. We can all glimpse in the mirror of our own lives or those of our children how that impulsivity takes hold, and this glimpse, in turn, helps us to understand in our imagination how these capital clients see and experience the daunting world around them. It is a glimpse at once of frailty and kinship.

The mental health field has long recognized the importance and role of dimensionality in the expression of mental disorders. Physical disorders and diseases often have a specific, discrete event, pathogen or lesion, a core pathophysiology, and an associated array of signs and symptoms that mark the disorder as a discrete clinical condition. In contrast, mental disorders are often characterized by an "extraordinary and obstinate heterogeneity," whose richness is best captured on a dimensional model:

... [W]e have overwhelming evidence that ... disorders of behavior are, with minimal exception, the products of countless discrete, dimensional, interactive, and sequential influences: biological, psychosocial, and sociocultural; historic and current; "hardware" (i.e. innate brain characteristics and any acute or persistent physical insults to the central nervous system) and "software" (i.e. the "programs" and data loaded into that hardware system from birth to present); planned and accidental, including random bad luck.... To anticipate that the outcomes of these multiple, complexly interwoven and ... highly idiosyncratic antecedent processes ... will fall out naturally into neat, digital packages of the kind envisaged by a ... [categorical] diagnostic system is to strain the limits of credibility.<sup>25</sup>

As is evident from the above, it is often more common for patients to exhibit co-occurring diagnoses than to meet criteria for a single diagnosis only.<sup>26</sup> Anecdotal experience with many clients on death row suggests that this tendency towards co-occurrence, which is prevalent in the general population, is even more pervasive in capital charged and convicted clients. The heightened vulnerability of this group may be understood in the context of the psychological literature on risk factors and resilience,<sup>27</sup> which shows that exposure to adversity is not evenly distributed across the population. For example, children with competent and effective parents are exposed to fewer adverse life events than are children with less effective parents.

Moreover, the accumulation of concurrent risk exposures is strongly related to poor outcomes on multiple measures of development. Severe marital discord, low socio-economic status, overcrowded living conditions, paternal criminality, maternal psychiatric disorder, and out-of-home placement are all variables associated with child psychiatric disorder. Children exposed to two of these factors have a fourfold risk of developing a psychiatric disorder than do children exposed to just one; with exposure to more than two of these factors, as is true for many capital charged clients, the risk is exponentially increased.<sup>28</sup>

Research also shows that for certain patients, symptoms remission is relatively rare. Again, this finding is true for clinical populations, where (in contrast to capital charged and convicted clients) there is a greater likelihood of family support and access to psychopharmacologic treatment and other clinical interventions to address psychiatric difficulties. Given a very vulnerable population, it is likely that the general problems with symptom remission may be greatly exacerbated.

In the current DSM, criteria have been set to establish or rule out particular diagnoses (e.g. does the person meet five of nine possible symptoms, or three of seven, or two of five, etc.?). While empirical data provided the basis for decisions about criteria for some of the disorders, later research has sometimes shown that the criteria would have been different if the data had been collected in different settings, suggesting how arbitrary these decisions can be.<sup>29</sup> The heterogeneity of mental disorders is a problem of such magnitude that the developers of the DSM-V face important decisions about whether to include alternative criterion sets for different ethnic, gender and cultural groups.<sup>30</sup>



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The problem of how to identify the boundaries between what is viewed as normal and what is considered abnormal is also seen in the addition of new diagnoses to subsequent editions of the DSM: the purpose of most new additions is to fill in the holes and gaps along the boundaries of existing categories,<sup>31</sup> i.e., to describe a clinical problem which appears to occur on a continuum between an existing category of mental disorder and normal functioning.<sup>32</sup> For example, recurrent brief depressive disorder is major depression with shorter episodes; acute stress disorder is PTSD with a shorter duration; mixed anxiety-depressive disorder describes subthreshold cases of mood and anxiety disorders; binge eating disorder concerns subthreshold cases of bulimia nervosa; bipolar II disorder fills in gaps between bipolar I and cyclothymia; and mild neurocognitive disorder concerns subthreshold cases of dementia, delirium, or amnesic disorder. In each of these cases, the attempt was to capture clinically significant phenomena that signaled psychiatric difficulty but did not meet diagnostic criteria for an established disorder.

Dimensional approaches to the classification of mental disorders have gained support among some clinicians and researchers because of the recognition that many patients meet criteria for a number of different mental disorders. For example, the average number of personality disorder diagnoses is often greater than four,<sup>33</sup> and patients may meet criteria for as many as 7, 8, 9 and even 11 personality disorder diagnoses.<sup>34</sup> Not surprisingly, the personality disorder diagnosis most frequently given is "Personality Disorder Not Otherwise Specified."

Ironically, the theory underlying the personality disorder category is that there is a clearly defined personality to be described ("persons have only one personality").<sup>35</sup> While the categories as described in the DSM provide vivid and clear images of various personality disorders, when, as frequently occurs, the patient is not a prototypical type, the diagnosis is misleading and stereotypical, and fails to capture the complexity that actually exists.<sup>36</sup> While the personality disorders are particularly problematic, the "Not Otherwise Specified" category is the most frequently provided diagnosis in general clinical practice,<sup>37</sup> presumably because diagnostic nomenclature in its current form is inadequate in its ability to classify actual clinical phenomena under the time constraints of typical clinical practice.

Depression has been described clearly by physicians since antiquity, but it may also be a condition best understood using a dimensional approach. In depression the debate over categorical versus dimensional models can be traced back for almost a century.

38 The current focus of the discussion is whether subclinical forms of depression lie on a continuum with clinical cases, or whether subthreshold and clinical cases represent qualitatively distinct phenomena. A considerable body of data shows there are significant links between subclinical and full syndromal forms of depression, indicating that depressive syndromes occur on a continuum, i.e., that major depression as articulated in the DSM-IV may be a diagnostic convention imposed on a continuum of depressive symptoms of varying severity and duration.<sup>39</sup>

Observations of the longitudinal course of mental disorders reveal that the interweaving of some disorders is so frequent and pervasive that there is a basis to consider them alternative manifestations of a single disorder rather than co-occurring disorders. For example, about 75 percent of patients with dysthymic disorder have a lifetime history of suffering from major depression. As noted by leading researchers in this area:

How reasonable is it to consider these individuals as having two distinct disorders rather than a single disorder with more chronic and more episodic manifestations? Such a view would be analogous to a chronic physical disorder (e.g. arthritis, asthma, or diabetes) in which acute exacerbations occur from time to time. That some individuals do not have acute exacerbations (i.e., do not have major depressive episodes within dysthymia) or that others suffer primarily from relatively discrete episodes is not an argument against this view. Rather, it speaks simply to the longitudinal heterogeneity of clinical presentation, which is likely as common among psychological disorders as physical illness.<sup>40</sup>

The dissociative disorders represent another cluster of conditions whose diagnosis is so subtle that clinicians, required to indicate a diagnosis if only for billing purposes, most frequently make the vaguest choice: "Not Otherwise Specified." A more precise diagnosis will require not only

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longitudinal observation, but also a meticulously documented social history. "Not Otherwise Specified" may in reality refer to many possibilities, from Post Traumatic Stress Disorder to Dissociative Identity Disorder or even Schizoaffective Disorder.

In the context of mitigation (as opposed to treatment), diagnostic precision is less significant than a rich and detailed inventory of symptoms, a carefully chronicled phenomenology of the client's mental anguish. Mitigation is an area where the law does not ask what mental disease or defect affects an individual's present functioning or mental state at the time of the offense.

Instead, the law asks how individual frailties manifested over the course of a lifetime, whether through co-occurring mental disorders or chronic and episodic manifestations of one disorder.

Diagnostic debate often overshadows the tragic reality that two clinical snapshots may both reflect symptoms of frailty which should inspire compassion or mercy. Just as youth is still mitigating beyond statutory cut-offs and subaverage intellectual functioning is mitigating whether it measures one or two standard deviations on the spectrum of cognitive disability, so too are the waxing and waning symptoms of mental and emotional distress, even when there is diagnostic ambiguity. It is the symptoms themselves which are capable of evoking empathy and kinship, by providing context, explanation, and insight into the world as the capital client experiences it.

#### Notes:

1. 428 U.S. 280 (1976), at 303.
2. 2 As quoted in *Witherspoon v. Illinois*, 391 U.S. 510 (1968), at 520, n. 17. Koestler's *Reflections on Hanging*, 166-167 (1956).
3. 476 U.S. 1 (1986).
4. *Skipper*, at 4-5. The Ninth Circuit has recently interpreted *Skipper* as providing an "alternative forward-looking purpose" for mitigating evidence. In this view, "This alternative purpose has nothing to do with persuading the jury that the defendant is less culpable with respect to the crime because of some aspect of his family background, personal history, character, or mental capacity. Rather, as defined by the Supreme Court in *Skipper v. South Carolina*, the jury must 'consider[ ] a defendant's past conduct as indicative of his probable future behavior' and 'draw[ ] favorable inferences' about a defendant's 'probable future conduct if sentenced to life in prison.'" 476 U.S. at 4-5 (emphasis added). *Belmontes v. Woodford*, No. 01-99018, 2003 U.S. App. LEXIS 14127, at \*93 (9th Cir. July 15, 2003). Indeed, in another recent California case, the Attorney General argued that it is too burdensome to ask prosecutors to produce "generic" mitigation evidence under *Brady* because "mitigation is in the eyes of the beholder" and "What may be offered as mitigating is really only limited by the imagination and creativity of defense counsel." *In re Steele*, No. S114551, Return to Order to Show Cause and Memorandum of Points and Authorities in Support of Return, filed June 27, 2003, at pp. 20 and 21.
5. 481 U.S. 279 (1987).
6. *McCleskey*, at 306.
7. 536 U.S. 304 (2002).
8. 529 U.S. 362 (2000).
9. 539 U.S. 510, 123 S.Ct. 2527 (2003).
10. T. A. Widiger and A. J. Frances, "Toward a dimensional model for the personality disorders," in P. T. Costa and T. A. Widiger, eds., *Personality Disorders and the Five-Factor Model of Personality*, 2nd edition (Washington, D.C.: American Psychological Association, 2002).
11. In October 2001, President Bush established the President's Commission on Excellence in Special Education to recommend reforms to improve the educational performance of children with disabilities. On July 9, 2002, the Commission issued its report, "A New Era: Revitalizing Special Education for Children and Their Families," available at the Department of Education's Web site at <http://222.ed.gov/initiatives/commissionsboards/whspecialeducation>. See "Assessment and Identification" section, at p. 21.
12. American Psychiatric Association, *Diagnostic and Statistical Manual, Mental Disorders* (Washington, D.C.: American Psychiatric Association, 1952), pp. 23-24. American Psychiatric Association, *Quick Reference to the Diagnostic Criteria from DSM-III* (Washington, D.C.: American Psychiatric Association, 1980), pp. 25-26.
13. *Williams*, at 372, n. 4.
14. *Id.*, at 396.
15. *Wiggins*, at 2532.

Scanned Jun 18, 2013

16. *Id.*, at 2533.17. *Id.*, at 2536.

18. The category of "Borderline Intellectual Functioning" is now discussed under "Other Conditions That May Be a Focus of Clinical Attention": "This category can be used when the focus of clinical attention is associated with borderline intellectual functioning, that is, an IQ in the 71-84 range. Differential diagnosis between Borderline Intellectual Functioning and Mental Retardation (an IQ of 70 or below) is especially difficult when the coexistence of certain mental disorders (e.g., Schizophrenia) is involved." American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 4th edition, Text Revision (Washington, D.C.: American Psychiatric Association, 2000), p. 740.

19. 455 U.S. 104 (1982).

20. Eddings, at 115-6.

21. See Sharon Begley, "Getting Inside a Teen Brain," *Newsweek*, February 28, 2000, pp. 58-59, reporting findings of Jay Giedd of the National Institute of Mental Health (corpus callosum, the cable of nerves connecting the right and left hemispheres, "continues growing into your twenties") and Elizabeth Sowell of UCLA's Lab of Neuro Imaging (frontal lobes—responsible for such "executive functions as self-control, judgment, emotional regulation, organization and planning—undergo the greatest change between puberty and young adulthood). See also Jay N. Giedd et al., "Brain development during childhood and adolescence: a longitudinal MRI study," *Nature Neuroscience*, v. 2, n. 10 (1999), pp. 861-3; and Elizabeth Sowell et al., "In vivo evidence for post-adolescent brain maturation in frontal and striatal regions," *Nature Neuroscience*, v. 2, n. 10 (1999), pp. 859-61.

22. Declaration of Ruben C. Gur, Ph.D. in *Patterson v. Texas*, Petition for Writ of Certiorari to U. S. Supreme Court, J. Gary Hart, Counsel. Available online at [www.abanet.org/crimjust/juvjus/Gur%20affidavit.pdf](http://www.abanet.org/crimjust/juvjus/Gur%20affidavit.pdf).

23. See Susan L. Pollet, "Defining Adolescence and the End of Childhood in Family Court," *New York Law Journal*, August 18, 2003, pp. 4, 6. Quoting Wallace J. Mylniec, Pollet notes that "the law recognizes rigid demarcations between adulthood and childhood based on age. The age at which a child legally becomes an adult may vary from 14 to 21 for a particular event." (Mylniec, "A Judge's Ethical Dilemma: Assessing a Child's Capacity to Choose," 64 *Fordham L. Rev.* 1873, March 1996)

24. See The Seventh Report of the Joint National Committee on Prevention, Detection, Evaluation, and Treatment of High Blood Pressure, reported in the *Journal of the American Medical Association* (May 21, 2003), recommending a more aggressive approach to the diagnosis and management of hypertension and defining as prehypertensive systolic BP readings of 120 or more and diastolic BP readings of 80 or more.

25. R. C. Carson, "Dilemmas in the pathway of the DSM-IV," *Journal of Abnormal Psychology*, v. 100, n. 3 (1991), pp. 302-307.

26. T. A. Widiger and L. A. Clark, "Toward DSM-V and the classification of psychopathology," *Psychological Bulletin*, v. 126, n. 6 (2000), pp. 946-963.

27. See Ann S. Masten, "Ordinary Magic: Resilience Processes in Development," *American Psychologist*, v. 56, n. 3 (2001) for a discussion of factors associated with risk and adversity exposure and resilience.

28. See Michael Rutter, A. Cox, C. Tupling, M. Berger, W. Yule, "Attainment and Adjustment in Two Geographical Areas: The Prevalence of Psychiatric Disorder," *British Journal of Psychiatry*, 126, 1975, 493-509; Michael Rutter, B. Yule, D. Quinton, O. Rowlands, W. Yule, M. Berger, "Attainment and Adjustment in Two Geographical Areas: Some Factors Accounting for Area Differences," *British Journal of Psychiatry*, 126, 1975, 520-533; both in Michael Rutter, "Protective Factors in Children's Responses to Stress and Disadvantage," in Martha Whalen Kent, Jon E. Wolf, eds., *Primary Prevention of Psychopathology: Social Competence in Children*, 3, (Hanover, NH: University Press of New England, 1979), 51-53.]

29. Widiger and Frances, *op. cit.*30. Widiger and Clark, *op. cit.*31. Widiger and Clark, *op. cit.*

32. Thus, the number of diagnoses in the DSM has grown from approximately a hundred in the original edition (1952) to roughly three hundred in the latest (1994).

33. A. E. Skodol, L. Rosnick, H. D. Kellman, J. Oldhan, and S. E. Hyler, "Validating structured DSM-III-R personality disorder assessments with logitudinal data," *American Journal of Psychiatry*, v. 43, n. 6 (1988), pp. 1297-1299; T. A. Widiger, T. J. Trull, S. Hurt, J. Clarkin, and A.



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Farfices, "A multidimensional scaling of the DSM-III personality disorders," *Archives of General Psychiatry*, v. 44 (1987), pp. 557-563; and P. T. Costa and T. A. Widiger, "Introduction: Personality disorders and the five-factor model of personality," in P. T. Costa and T. A. Widiger, eds., *Personality Disorders and the Five-Factor Model of Personality*, 2nd edition (Washington, D.C.: American Psychological Association, 2002).

34. Widiger and Francis, op. cit.

35. T. A. Widiger, "Mental disorders as discrete clinical conditions: dimensional versus categorical classification," in S. M. Turner and M. Hersen, eds., *Adult Psychopathology and Diagnosis*, 3rd edition (New York: John Wiley & Sons, Inc., 1997).

36. To address this problem, some current research proposes the adoption of a dimensional, five factor model of personality disorders.

37. Widiger and Clark, op. cit.

38. S. A. Shankman and D. N. Klein, "Dimensional diagnosis of depression: Adding the dimension of course to severity, and comparison to the DSM," *Comprehensive Psychiatry*, v. 43, n. 6 (2002), pp. 420-426.

39. K. S. Kendler and C. O. Gardner, "Boundaries of major depression: An evaluation of DSM-IV criteria," *American Journal of Psychiatry*, v. 155, n. 2 (1998), pp. 172-177; Shankman and Klein, op. cit.

40. Widiger and Clark, op. cit., p. 956.

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DX-10

MARY LOPEZ BUITRON, CSR, RPR  
Official Court Reporter - 94th District Court

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**Dr. Martinez Time**  
**John Henry Ramirez, Jr.**

<b>Date</b>	<b>Who Dr. Martinez met with</b>	<b>Time</b>
7/3/2008	Jail	.25
7/16/2008	John Henry Ramirez, Jr.	2.5
7/18/2008	Attorneys	1.0
10/8/2008	Attorneys	1.0
10/15/2008	Records Review	1.25
10/27/2008	Records Review	2.25
10/27/2008	Collateral Interview (Guadeloupe Hinojosa – Paternal Grandmother)	1.75
10/27/2008	Report Preparation	1.5
10/29/2008	Collateral Interview (Josie Smithwick - Teacher)	1.5
10/30/2008 or 11/1/2008	Collateral Interview (Father?)	.5
11/1/2008	John Henry Ramirez, Jr.	2.25
11/9/2008	Report Preparation	2.0
11/12/2008	Report Preparation	1.5
11/15/2008	Report Preparation	2.5
11/15/2008	Collateral Interview (Guadalupe Alejandro – Maternal Grandmother)	1.5
11/16/2008	Collateral Interview (Guadalupe Alvarez – younger ½ sister)	.25
11/20/2008	Attorneys	1.5
11/28/2008	Records review	.75
11/28/2008	Report Preparation	1.75
12/2/2008	Report Preparation	1.5
Wednesday 12/3/2008	Attorneys	.75
12/3/2008	Records review	.25
Friday 12/5/2008	Report Preparation (19 page Report dated 12/4/2008 - Thursday)	2.0
Sunday 12/7/2008	John Henry Ramirez, Jr. & Attorneys	1.0
12/7/2008	Attorneys	2.0
Monday 12/8/2008	Court – Testifying	.75





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DX-11

MARY LOPEZ BUITRON, CSR, RPR  
*Official Court Reporter - 94th District Court*

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Ramirez arguments 112708.txt

People are not born criminals

People are not born with bad judgment

Ramirez was abused by his mother / she destroyed his ability  
to feel self esteem / he belittled him / there was nothing he could  
do right / here was nothing he could do to please her / he wanted  
her love and wanted to please her / he was a runt / the boy called  
it / he was abandoned by his father/ he had not role model/

he joined the Marine Corps to make a new beginning / he wanted to do  
something he could call his own / something he could claim as a basis for people  
to respect him / visited his old school teacher in his uniform / look what I have  
done / I know I was bad in high school, but not I have done something that  
will make you proud of me / he was seeking love, approval, respect

attitude makes the difference



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1 THE STATE OF TEXAS )

2 COUNTY OF NUECES )

3

4 I, Mary Lopez Buitron, Official Court Reporter in and  
5 for the 94th District Court of Nueces County, Texas, do hereby  
6 certify that the following exhibits constitute true and  
7 complete duplicates of the original exhibits, excluding  
8 physical evidence, offered into evidence during the trial in  
9 the above-entitled and numbered cause as set out herein before  
10 the Honorable Bobby Galvan, Judge Presiding for the 94th  
11 District Court of Nueces County, Texas, and a Writ hearing,  
12 heard on September 14, 2011; September 26, 2011; and October  
13 21, 2011.

14

15 WITNESS MY OFFICIAL HAND on this,

16 the 6th day of December, 2011.

17

18

19 MARY LOPEZ BUITRON, CSR, RPR, Texas CSR #3720  
20 Expiration Date: 12/31/2013  
21 Official Court Reporter,  
22 94th District Court  
23 Nueces County, Texas  
24 901 Leopard, Room 901  
25 Corpus Christi, Texas 78401  
(361) 888-0658

MARY LOPEZ BUITRON, CSR, RPR  
Official Court Reporter - 94th District Court